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ABSTRACT OF THE PROCEEDINGS

OF

THE COUNCIL OF THE GOVERNOR GENERAL OF INDIA,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS,

1886.

WITH INDEX.

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TO

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 Vict., cap. 67.

The Council met at Government House on Monday, the 4th January, 1886.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.
The Hon'ble C. P. Ilbert, C.S.I., C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble H. J. Reynolds, C.S.I.
The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.
The Hon'ble Peári Mohan Mukerji.
The Hon'ble H. St. A. Goodrich.
The Hon'ble R. Steel.
The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

LAHORE TRAMWAYS BILL, 1886.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to authorize the making, and to regulate the working, of Street Tramways in Lahore be taken into consideration. He said:—"This Bill is one of purely local interest, and I hope it will be the last of this class with which I shall have to trouble the Council. The general Tramways Bill, which is now before a Select Committee, will probably make it unnecessary to undertake legislation of this description in future."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

SUNDRY BILLS.

The Hon'ble MR. ILBERT also moved that the Hon'ble Mr. Quinton and the Hon'ble Rájá Amír Hasan be added to the Select Committee on the Bill to amend the Northern India Ferries Act, 1878.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Hon'ble Rájá Amír Hasan be added to the Select Committee on the Bill to declare and amend the law relating to the Stone Mahál in the District of Mirzapur in the North-Western Provinces.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Hon'ble Rájá Amír Hasan be added to the Select Committee on the Bill to provide for the voluntary Registration of certain Births and Deaths, for the establishments of General Registry Offices for keeping Registers of certain Births, Deaths and Marriages, and for certain other purposes.

The Motion was put and agreed to.

LICENSE TAX AMENDMENT BILL, 1886.

The Hon'ble SIR A. COLVIN moved for leave to introduce a Bill for imposing a tax on income derived from sources other than agriculture. He said :—

" It will be desirable, in asking leave to introduce the Bill inscribed on the list of business before us, that I should explain the circumstances in which we have found it necessary to have recourse to legislation with the purpose of increasing our revenue. In coming before this Council with a Bill the object of which is to add to our present means of direct taxation we shall be expected, and very reasonably expected, to demonstrate its necessity. I shall endeavour to do so as clearly, but at the same time as succinctly, as I can. To enter at great length or with infinite detail into the present prospects and into the past fortunes of our finances would be out of place here, and would, I feel sure, assist this Council very little. At the best, they would but follow me (as one tracks a mole working underground) by the heaps it leaves behind, by a series of recurring groups of confusing financial figures. But, as the object of what I have to say is to enable those who are here to seize clearly and firmly the problem which the Government have to solve, I shall, I believe, assist them best in doing so by avoiding as much as possible mazes of figures and intricacies of calculation, and keeping to the broad beaten high road, open and accessible to all, and easily traversed from end to end by those who will give themselves the trouble to accomplish it. I shall briefly examine the past and the actual financial situation; I shall show this Council what is the figure at which we estimate the deficit of next year; I shall examine the several methods which present themselves of meeting this deficit; I shall then state the reasons which have led us to adopt such an amendment of the License Tax as shall place direct taxation on a more equitable basis, and I shall close with such remarks as may show that the measure we propose to introduce is one which opponents in former days of an income tax have expressed themselves as willing to accept. It is impossible to give a clear view of the present situation without glancing back, however briefly, at the circumstances of the last three preceding years, so as to show what has been the equilibrium of revenue and expenditure from 1882 onwards, what are the resources which they have left us on which we can count to meet

increased demands for expenditure, and what is the nature and extent of the recent charges imposed upon us, which are so serious as to leave us no doubt of the inadequacy of our revenue, as at present estimated, to provide for them. I take 1882 as the point of departure, because that was the year in which the Government of India introduced changes in our revenue of a nature so radical and decisive as to constitute an epoch from which a new departure must be dated. In the Budget Statement for the present year I said, it may be remembered, that 'the measures adopted in 1882 had been fully justified by the experience acquired since their introduction, but' I added 'it was doubtful whether the status which they established would prove sufficient in view of the further trials which seemed to be awaiting us and of the necessities of our situation, whether connected with the state of our currency or with the measures necessary for the development and protection of the country.' What, then, has been the course of events since the Budget of 1882-83 was introduced? And what were my grounds for saying that the calculations of that Budget had been justified by experience, but that it seemed likely that the resources which they furnished us would have shortly to be supplemented? In that year, 1882-83, the rate of duty on salt was reduced to R2 a maund everywhere, excepting in the Trans-Indus Districts of the Punjab and Burma, (where a specially low rate of duty had previously prevailed,) at a cost of £1,400,000. Cotton duties and the general import duties were entirely abolished at a gross cost of £1,219,000. The Patwari Cess in the North-Western Provinces was remitted, and the Government undertook the payment of patwaris in Oudh, the change involving a virtual remission of taxation to the extent of £316,000. These changes, with certain administrative reforms, amounted to about three millions. The surplus estimated in the Budget, notwithstanding these very large reductions, amounted to £285,000; the actual surplus, however, was £706,633, in spite of the provision necessary for the war in Egypt, which amounted to over half a million; of the reduction, in the rate of export duty on Malwa opium, of R50 per chest; and of the serious fall in the exchange which reached £306,433 in excess of the Budget Estimate. This, then, was the result of the first year—remission of revenue to the amount of three millions, war, reduction of duty on Malwa opium and increased loss on exchange; yet a surplus of £700,000.

"In the following year 1883-84 exchange was taken at 1*s.* 7½*d.* instead of 1*s.* 8*d.*, and the total charge on account of Exchange in that year was £773,000 higher than in the Budget Estimates of 1882-83. Owing to short crops in previous years the amount of opium put upon the market was also reduced in 1883-84; and from these two causes a million less was taken on that account in the estimates, while in the course of the year £1,000,000 not provided for in the estimates was paid to Her Majesty's Government on account of arrears of non-effective charges of the British Army. The surplus budgetted for in that year was £457,000; the actual surplus was no less than

£1,387,496. In the ensuing year, namely, in 1884-85, the surplus estimated for was £319,300; short sales of opium, very heavy expenditure connected with an extraordinary opium crop, falling off in customs, and in railway income, with the other unfavourable causes explained in the Financial Statement of the present year, again lowered our revenue; yet although in that Financial Statement on the revised estimates for 1884-85 a deficit of £716,200 was calculated upon, there is every reason to anticipate that the accounts now shortly to be closed will show an equilibrium.

"It will be seen from this brief review that during the last three years the surplus of revenue over expenditure, notwithstanding the great reductions carried out in 1882, has averaged, so far as we at present know, in the three years not less than £700,000. The revenues, reduced in 1882 by an annual sum of three millions, have still amply sufficed to meet the difficulties arising from a variety of causes, such as short opium crops, temporary falling-off in railway receipts, war charges, and a heavy claim for payment of arrears of non-effective military charges. The expansion of the revenue, and especially of the railway revenue, will be familiar to all who have watched the course of Indian finance; and it will, probably, be admitted that the figures which I have quoted give striking evidence of the sagacity of the calculations which estimated that 3 millions could, in 1882, be taken off our revenue estimates without causing anxiety. The present year again, the estimates of which were framed on the basis of depression in regard to railways, customs, and opium, still (apart of course from the extraordinary charges put upon us in connection with the preparations for war) shows on its estimates a small surplus of £508,100. It is not necessary at present to dwell on the Estimates of 1885-86 further than to say that the experience gained in previous years will, I have little doubt, prove, when the Budget Statement of the ensuing year is published, to have been fully continued in 1885-86, and that, apart from the extraordinary war expenditure, our resources will, in the current year, have sufficed to meet our burdens. But, with the present year, our brief spell of happiness has come to an end; the fat kine have passed on; the lean kine are come in. Three uninterrupted years of prosperity is a godsend in the annals of any nation; in our Indian annals it is extraordinarily rare good fortune. I know that there are many who think that the capricious and uncertain elements in Indian finance should have been allowed more weight in the counsels of those who carried out the reforms of 1882. I do not share those views. If any man has a right to complain, it is I; for on my shoulders is placed the burden of finding fresh resources to replace those which in 1882 were dispensed with. But I do not share the views of those who cry shame on the Government which lightened by three millions the public burden in 1882, and gave to the tax-payers respite to the present moment. This is neither the place nor the time to enter into a discussion of the policy of 1882; but this much I may affirm, that, whatever may be said

about the abolition of the import duties in that year, the exemption from duty in March 1878 by the Government of Lord Lytton of certain descriptions of grey cotton goods made the abolition of the import duties on all cotton goods a question only of time, and of very brief time. If Apollos was constrained to water it was because Paul had sowed. The corner stone was taken out of the edifice in 1878, and the whole fabric of import dues was bound shortly to be removed, under pain of becoming a nuisance and a danger. The decrease, again, in the salt duties has been rewarded by the increase in the subsequent consumption of salt by 13 per cent. in the three subsequent years ending with the 1st of January of the present year—consumption which is steadily increasing. To come back, however, to the thread of my remarks and from the unprofitable pursuit of what might have been to the practical examination of what is. The good time is over; the day of difficulties is again with us; we are labouring once more, not under a plethora, but a want, of money. We shall probably be called upon next year to meet an increased charge of nearly a crore of rupees owing to the fall of a penny in the exchange; that is, instead of taking our exchange next year at 1*s.* 7*d.*, it is prudent at present in making our estimates to assume that we shall have to take it at 1*s.* 6*d.* The so-called loss by exchange imposes on us sacrifices which it is beyond the power of this Government or of any Government, acting singly, to avert; no foresight, no economy, can save us from the depression which silver, largely demonetised and become, so far as it is demonetised, a mere commodity, has, in common with all other commodities, undergone relatively to gold; and from the effects of which we, as a Government, with a silver standard whose dealings are mainly with England, a country of a gold standard, are especially called upon to suffer. At the same time we shall have to provide for an increase in our Military Estimates, whether for pay of troops or interest on Capital to be expended on Defence Works, which eventually will amount to no less than two millions. For this, of course, we are responsible, and if I do not pause here to justify it, it is because others whose special province it is will doubtless undertake that duty. The whole of this latter charge, however, will not fall during the first year; but taking the increased charge on account of exchange and military establishments next year, inclusive of interest on the Capital for frontier railways defence works, it may be calculated at about £2,000,000. Speaking broadly, in round figures, we may assume that of this sum all but £700,000 will be forthcoming on our ordinary estimates. In other words, nearly two-thirds of the increase to our expenditure estimates of £2,000,000 next year caused by the fall in exchange and the increased military expenditure will, according to our expectations, be met from our existing resources.

"To the extent then of £1,300,000 we count upon the funds provided for us, as resulting from the arrangements made in 1882, and that we can so count is proof of the foresight with which those arrangements were made. We could have provided, in other words, for the fall of a penny in exchange, or we could have added to our estimates the sum necessary to meet the additional proposed military expenditure, and the interest on frontier railway and defence works for the ensuing year; but the two charges combined have been too much for us, and have compelled us to seek about for ways and means whereby to meet our accumulated difficulties. I shall be asked how, if the Budget of 1885-86 shows a surplus of £500,000 only, we expect in the coming year to provide £1,300,000 from existing sources. I shall be told that it is customary to show in our estimates, after all expenditure has been met and accounted for, a normal surplus of about half a million; so that deducting the above surplus of £500,000 which must be kept in hand, and assuming that £700,000 are to be raised by taxation, there remain apparently £1,300,000 unprovided for. The chasm certainly appears considerable; but a chasm, like a conscience, is all the better for close inspection. Let us examine it. The explanation, briefly stated, is that the estimates of 1885-86 were in more than one respect abnormally low. The provision of 1882 had not been worked up to. The depression in our railway receipts which set in in 1884-85 still threatened us, and we based our estimates on the cautious view that that depression would continue in 1885-86. Hence our estimates for the current year were estimates below the standard of our normal expectations. But the depression I speak of has partly worn off; other sources of revenue have recovered. We were, in 1885-86, when the estimates were framed, suffering from stagnation of exports and customs and from short opium revenue, owing to the necessity of increasing our opium reserves which had been depleted by a course of bad years, this necessity again compelling us to put upon the market a smaller amount of opium than would otherwise have been the case. The estimates, both for railway and opium receipts, were therefore taken at an exceptional figure; but since then, I am glad to say, the export trade and with it our railway receipts have considerably revived, and the customs are showing better results. It is more than probable that the revised estimates for the present year will show a net increase of half a million over the estimates under the head of Railways, an improvement which we may look to maintain in the coming year; and as two bumper opium crops have followed one another this year and last year, we may expect considerable improvement, say £200,000, in the opium revenue next year. In consequence of the new method of calculating the military non-effective charges, we shall have in

1886-87 a saving, as compared with 1885-86, in round numbers, of £363,250 under that head. The normal annual increase to our revenue may be taken, as experience has shown us, at £150,000. In the budget of 1885-86 a sum of £585,000 was allotted from revenue to the construction of frontier railways and defence works, which, in view of the exigencies and pressure of our position, will be charged in the ensuing years to Capital. I admit that, speaking for myself, nothing but absolute necessity would induce me to assent to the construction of works of this nature from Capital. But if ever there was a case of absolute necessity, it is the present; and if the choice is to be between increased taxation to the amount of £580,000 or the construction of these works from Capital, it may be reasonably contended that the latter is preferable. As Sir John Strachey said in his Financial Statement for 1880-81 speaking of frontier railways, 'If we could not have paid for them out of our ordinary revenue, it would have been quite right to borrow for their construction. I should have said this because the works are absolutely necessary, and because the political and financial evils of borrowing would be less serious than those involved in fresh taxation.' In the Financial Statement for this year it was pointed out that it has always been hitherto the policy of the Government of India to meet demands of this nature, so far as they can be met, from its revenue; revenue failing the Government of India is prepared to have recourse to borrowing. Revenue failing, and further taxation being undesirable, the Government is prepared to do so now. Taking the total then of the items which I have enumerated, we obtain, in round numbers, the figure of £1,800,000 out of a total estimated additional expenditure of two millions, leaving us a balance of £700,000 to obtain the normal surplus which we consider necessary to exhibit in our accounts. It will, of course, be borne in mind that, in giving to the Council the above calculations, I do so under the reserve of further experience. Little less than a quarter of the year has still to pass; if, on the on hand, I have been moderate in my estimate of increased revenue, I have taken no account, for I know nothing, of what increased expenditure may be in store for us in respect, for example, of Burmah. The figures I have given are an approximation; as close an approximation as I can at present form; if they show nothing else they show, at any rate, I think, this much, that we may require more than £700,000 to obtain the necessary working surplus, but that we certainly shall not want less; and that, for the present, is all which I am in any way concerned to demonstrate.

"Now, there were several ways open to us to obtain the funds which we required. The first and most obvious method is economy, and no one can be

more conscious than the Government of India how needful and how urgent it is, in view of the difficulties, present and prospective, which surround us, to carry out whether in the actual present or a more distant future all economies which are practicable. It is a matter to which we are devoting anxious attention, and in regard to which Your Excellency will, I believe, explain the measures which we have in contemplation. But there are considerations in the way of enforcing, except in the last resort, any considerable economy in the estimates of civil expenditure for the immediately ensuing year which cannot be lightly set aside. I do not in saying this wish to be understood as in the slightest degree endorsing the view as to the folly of making reductions which has been lately urged on this Government from more than one quarter; for I cannot for the life of me bring myself to see that the best way out of pecuniary obligations which you are not likely to be able to meet is by adding to them. I wish with all my heart it were, for it would simplify my task exceedingly. Thus, we have been told that if economy is a good dog, borrowing is a better. A passed master in the art of meeting pecuniary obligations, whose authority as we know is unimpeachable, was obliged at last to confess that he could get 'no remedy against this consumption of the purse; borrowing only lingers and lingers it out, but the disease is incurable.' In public as in private life, in short, the approach of money difficulties is the signal for retrenchment; and if we do not at the present moment look to economies to fill the void which threatens us in the coming year, it is not because we agree with those who think economies a pestilent source of extravagance, or because we do not ardently desire them, but because they are not in any decisive degree immediately attainable. The arrangements by which the Government of India has assigned to Provincial Governments the disposal of a large part of the public revenues has had for its aim, and has achieved, the practice of economy and good administration. But, save in circumstances of an exceptional nature, the Local Governments have been assured that, during the term of what are known as the Provincial contracts, the arrangements with them, by which, during a fixed term, they are secured certain revenues, shall not be disturbed. Hence, if those contracts are not to be disturbed, the Government of India can economise only on the margin left for its own administration, and which is largely composed of military, postal, telegraphic or other similar charges which are not susceptible of instant reduction. Of course it is the Government of India which in the last resort must decide what are circumstances of an exceptional nature. It decided, for example, that the circumstances of the present year were of such a nature, and the Provincial Governments very loyally responded to its call.

When it came however to determine what course it should adopt in regard to the situation created by the circumstances which I have explained to the Council, it was met by the consideration that the Provincial arrangements now in force expire at the close of the Financial year 1886-87, at the close, that is, of the ensuing financial year; and that it would then, in any case, be in a position to re-adjust the partition of the revenues. No re-adjustment which was likely to prove practicable would be of itself sufficient to remove all necessity for resorting to other means of increasing our revenue. There was but one year to be tided over; and in that year the maximum expenditure on account of military establishments and frontier works would not be reached. On the other hand, to put an end without proved necessity in the fourth year of their quinquennial term to those contracts, would have led to great doubts and misgivings in future, doubts and misgivings which were inconsistent with the economical aims and objects which are the strength and the justification of the system introduced by Lord Mayo. We were the judges in our own case; and it was the more necessary therefore to be sure that, in satisfying our own necessities, we were not falling short of engagements into which we and our predecessors had deliberately entered, and to which we were pledged. We were not, and we are not yet, in a position absolutely to say, at this period of the financial year, that it is unnecessary to call the Provincial Governments to our assistance. All that we can be sure of is that such a measure does not at present seem to be imminent; that if it were necessary it would not release us from the task of further strengthening our revenues; that in itself it is likely to prove hurtful to good administration; and that what is needed is as much an increase of existing revenues, as a repartition of those which already are available, a repartition which, while it failed to fill the measure of Imperial needs, would be sure, if suddenly insisted on, to prove inconvenient to provincial administration. But at the same time we cannot close our eyes to the certainty that on the revision of the contracts in 1886-87 we shall be called upon to examine closely the details of our financial relations with the Local Governments with a view to such a re-adjustment as shall equitably distribute over the general revenues the recent additions which have been made to the general burden. We have warned them of this, and we have asked them not to embark in any fresh expenditure of a nature or extent to prejudice the settlement of our fresh relations with them, which must be effected in 1887.

" Then, again, there was the question of indirect taxation. For example, we might have replaced, in part or in whole, the reduction of the duty on salt which was made by the preceding Government; but to have done this would,

in the first place, have been to increase the burdens of the poorest classes of the community; it would have checked the consumption of salt, which has risen from 2,44,98,000 maunds in the period from 1st March 1881 to January 31st, 1882, to 2,77,92,000 maunds from 1st March 1884 to 31st January 1885, and would have been contrary to the pledge which was given by Sir Evelyn Baring at the time when he reduced the duty: he then said—

'We hope that we shall be able to maintain the duty at Rs. 2 a maund, and we have at present no reason to suppose that we shall be unable to do so. By a return to a higher rate, we should, of course, to some extent at all events, sacrifice the main object we have in view, *viz.*, to afford some relief from taxation to the poorest classes. At the same time, I should observe that if any unforeseen circumstances, such as a heavy fall in the value of silver, takes place, and if, at the same time, the reduction in the salt duty does not result in any considerable increase in the consumption of salt, it would be open to us to return temporarily to a higher rate. This is an expedient to which the Government would have recourse with great reluctance.'

"It will be observed that he anticipated replacing the duty in the event of a fall in silver, such, for example, as has taken place, and still more, therefore, (it may be argued) in the event of our being subjected to large unforeseen expenditure, such as recent events on the frontier have rendered, in the judgment of the Government, necessary for the protection of the country; but he added also a second condition, namely, that the reduction of the salt duty should not have resulted in any considerable increase in the consumption of salt. The figures I have given show that there has been a very considerable increase in the consumption of salt, giving evidence (all allowance made for the effect of increase in railway communications, and of improved administration), of the insufficient supply that was previously within the means of the people, and enabling us to judge of the effects which would follow, if not immediately, at any rate before very long, an enhancement of the existing duty. It is very possible that a time might come when (whether owing to increased facilities of distribution, or from other causes) enhancement of the salt duty to the rate which formerly existed, or to something falling short of it, might be advisable; but it is a measure which few, I imagine, would wish to see introduced so long as other legitimate resources were open to us. I may glance, in this connection, at what has been recently urged in more than one quarter with regard to the re-imposition of the import duties. We are assured that the measure would be extremely popular, that nobody would feel it, and that it would bring in a very large revenue. Popular, in one sense, it would certainly be, with that limited class on whom its burden did not fall, being precisely the class to whom I have above alluded, who contribute so

little. But, all other considerations, such as those connected with the expansion of our export trade and therewith of our railways, apart, it must be remembered that the burden of the import duties, like the burden of the salt duties, falls upon the masses of the people, who are the chief consumers, and it is idle to suppose that the re-imposition of the duties would not be felt by men whose income at the best is barely sufficient to afford them the sustenance necessary to support life, living as they do upon the barest necessities of life. It is always popular to pass obligations on to other people; but it is a kind of popularity which no Government, anxious for the equitable adjustment of the burdens to be imposed upon tax-payers, can possibly wish to acquire. Nor would it be possible to escape the difficulty of the local industries. How are we to re-impose the import duties without putting an excise upon local mills which are now so numerous and considerable? How otherwise could the import duties be regarded as other than protective duties? The question is not one which need be seriously discussed at present, not only on account of the economical and other objections to it, but because the time has not come when we need call upon the masses of the people to contribute further to the Imperial Treasury. But it cannot, in a statement of this kind, altogether be passed over in silence, because it is constantly being brought forward as a simple and easy escape from our difficulties by the class who are at present exempt from their due share of the public burden, and who seem, if without offence I may say so, more willing to impose that burden upon others than to lift so much as a corner of it with their own fingers. The philosophy which enables us with amazing equanimity to bear the misfortunes of our neighbours appears in a less unobjectionable form when it suggests the transfer to our neighbours of our own share of misfortunes. In fiscal, as in other mundane matters, man must bear his own burdens; an ordinance of which the propriety and, I may say, the decency, seems to me unassailable. Another course open to us was to review the scheme by which a million and a half are annually put aside for Famine Insurance, and to consider whether we might not utilise that sum, in whole or in part, for the purpose of meeting the fresh expenditure which was brought upon us. And here again I think it would be well that I should take this opportunity, although at the expense of time, of reminding this Council what the nature of the Famine Insurance scheme really is, and pointing out the mis-apprehensions which seem very generally to prevail upon this point. There seems to be a kind of idea that it is a separate fund deriving from, but quite irrespective of, our general revenues, and that this particular fund is always to be appropriated to a particular purpose, that particular purpose being the reduction of debt. If experience did not show that the very lucid explanations on this head given

by one of my predecessors on the point have fallen on absolutely deaf ears, it would be scarcely necessary for me to point out that there can be no such thing as a distinct fund, forming part of our general revenues, and yet independent of our general revenues; and that systematically to assign certain items in your revenues to separate fund, to earmark and assign that fund to the reduction of debt, to maintain it for that purpose, and thereby to encounter peradventure, a succession of deficits or the necessity of taxation to the amount so assigned, is an absurdity. What was said in 1861 by Mr. Laing in regard to the clauses in the Income Tax of 1860 by which it was required that 1 per cent. of the proceeds of that tax should be kept specially for Public Works applies, *mutatis mutandis*, to the present instance. 'To give,' he said, 'a statutory claim to money which we have not got, and can only make a pretence of giving with one hand, and taking it back with the other, ought not to be continued. Sham is rarely harmless; it is for the most part positively mischievous.' But the matter cannot be put in clearer language than that employed by Sir John Strachey in this Council on December 27th, 1877, and again on February 9th, 1878, and finally on November 14th, 1879; and in justice, no less to ourselves than to Sir John Strachey, I shall take the liberty of quoting those statements in full, though at the risk of some impatience on the part of some of those who are listening to me and who are already familiar with these declarations.

"This is what Sir John Strachey said in 1877:

'The objects of the Government, it will have been gathered, are two-fold, first, to obtain that addition to the public income which experience shows to be required to meet the charges that arise, directly or indirectly, in a series of years, by reason of scarcity and famine; and second, to secure a proper margin of ordinary surplus to meet those unforeseen irregularities in the Revenue and Expenditure, which necessarily lead to differences between the estimates of the year and the actual accounts.

'As to the first of these objects, I desire to say that the recognition by the Government of this new obligation implies no suggestion of diminished public wealth or a decaying revenue. Rather, the very contrary is true, and it is the stronger perception of the generally advancing condition of the community, and of its requirements and capacities, that has induced this movement. It is the firm intention of the present Government to apply the funds now to be provided for this special purpose, strictly to the exclusive objects which they were designed to secure. In such matters, no doubt, Governments cannot fetter their successors, and nothing that we could now say or do would prevent the application of this fund to other purposes. Without thinking of a future far removed from us, events might of course happen which would render it impracticable even for us, who have designed these measures, to maintain our present resolutions.

'So far, however, as we can now speak for the future, the Government of India intends to keep this million and a half as an insurance against famine alone. In saying

this I should explain that we do not contemplate the constitution of any separate statutory fund, as such a course would be attended with many useless and inconvenient complications, without giving any real security. Unless, then, it should be proved hereafter by experience that the annual appropriation of a smaller sum from our Revenues will give to the country the protection which it requires, we consider that the estimates of every year ought to make provision for religiously applying the sum I have mentioned to this sole purpose, and I hope that no desire to carry out any administrative improvement, however urgent, or any fiscal reform, however wise, will tempt the Government to neglect this sacred trust.'

"That was Sir John Strachey's first statement on the subject; clear enough one would have supposed; but if there were doubt on the subject what he said in 1878 should have effectually dispelled it. He said :—

'It was suggested at a previous meeting of the Council, and the proposal has been urged in a memorial received from the British Indian Association, that a separate fund should be created from the produce of the new taxes, for the objects now in view by the Government. I think it desirable to make a few observations on this subject. It may first be said that the money obtained by the new taxes will in fact be applied, either to discharge of debt the special origin of which cannot be ascertained, or to the construction of useful remunerative works of precisely the same description as those on which a far larger sum has hitherto been spent year by year, partly obtained from the general revenues and partly from borrowed funds. It is not the intention of the Government to reduce this outlay; on the contrary, it hopes to be able to increase it. To create any separate fund, therefore, would be to make a perfectly arbitrary and artificial distinction between a small part of the outlay, say 1½ millions, and the larger part, say 3 millions, on works in themselves not really distinguishable in their character or objects. Such a division would be, not only useless, but mischievous, and could not practically be maintained. It would necessarily lead to artifices in adjusting the grants and accounts, which would create suspicion and cause much trouble to all concerned.

'In fact, what the Government desires is to establish a sense of the obligation under which it is placed in respect to the expenditure due to famine, which shall be felt in the same way as the obligation to provide proper Courts of Justice, police, education, and so forth. For none of these objects has it ever entered into the mind of any one to suggest a special allocation of the revenue or a separate fund. Nor can any greater reason be found for a separate Famine fund than for separate funds for any of those other objects which are obligatory on the Government.

'The intention of the Government is to obtain the means of meeting the charges that arise in all parts of India on account of the relief of famine, whenever such calamities occur. This could not be done if the additional income obtained were specially allocated for expenditure in the Provinces where it is raised, and there never was any such intention. At the same time it is held to be desirable to employ the Provincial Governments in obtaining the funds, and in supervising their application so far as it takes the form of an investment in useful works of a remunerative character. It is with this exclusive object that it has been proposed to make the new taxes Provincial, so that the best possible agency shall be secured for their collection and for administering their outlay in detail.

'I will not attempt to state in detail the reasons why the persons responsible for the administration of the finances reject separate funds of all kinds, unless under very special circumstances, as productive of confusion and complication without any counterbalancing advantage. It will be enough, probably, after what I have already said on this point, to reconcile the Council and the public to the decision of the Government, not, in the present case, to create any separate fund, if I point out that any other determination might lead to results probably not contemplated by those who have suggested the establishment of a separate fund; I mean that this might involve the necessity for imposing more taxation. Suppose, for instance, that the produce of the new taxes were by law strictly set apart from the general revenues and paid into a separate fund only to be applied to specified purposes. If, then, any sudden change of circumstances arose, calling for seriously increased expenditure, or causing a considerable falling-off in the revenue, we should have to choose between the imposition of fresh taxes and the abrogation of the law constituting the fund; for I set aside the idea of meeting ordinary charges by borrowing as a course financially inadmissible. This dilemma might arise, though the pressure was likely to be only temporary; nor can any one say that such a contingency would be at all improbable, or that it might not occur at any moment.'

"However, in spite of all this, the fund legend continued in circulation, and in the following year Sir John again exposed it:

'I had supposed, my Lord, that if there was one thing which had been made clearer than another in regard to the measures in question, it was this,—that, although it was sometimes convenient to talk of a Famine Insurance Fund (I believe, however, that I myself on no single occasion used the expression), the Government altogether repudiated the idea that it was desirable to constitute any separate fund from the produce of the new taxes for the purpose of meeting expenditure on Famine. I said in the plainest language that I could find, in the debate in this Council on the 9th February 1878, that the creation of any separate fund would not only be useless but mischievous,—that it would disturb the adjustment of grants and accounts, and cause suspicion and trouble to all concerned.'

"Ineffectual, still, this third statement; error, more especially wilful error, dies hard; and here am I in 1886 again searing the head of this Hydra, ineffectually, no doubt, in my turn too. The fact of the matter is that the sums devoted to the Famine Insurance scheme, so long as they are not applied to normal, ordinary, expenditure, operate directly to the reduction of debt: if there is no loan they may operate directly to the reduction of debt: if money is borrowed, the amount borrowed is less by the sum which the Famine Insurance grant enables us to place to the credit of the cash balances. The original intention expressed, I may here mention, long before the debates of 1877 and 1878, by Lord Northbrook in the Resolution of April 23, 1874, with which the Financial Statement for 1874-75 was published, was as follows:—

'* * * * It would not be safe to depend upon loans for the purpose of meeting future charges on account of famines. Although means have been taken, and will be taken, to obviate or mitigate those calamities, some such charges must, for a time at least, be looked upon as contingencies to be expected to recur with more or less regularity.

'It is necessary, therefore, that, besides a fair surplus of income over ordinary expenditure, such a margin should be provided, in addition, in ordinary times, as shall constitute a reasonable provision for meeting occasional expenditure upon famines. If the surplus be employed in the reduction of debt, in the construction of reproductive public works, or remain in the cash balances, the expense caused by future droughts may fairly be met by appropriations from the cash balances, or by loan, to the full extent of the accumulations of surplus.

'This condition of things has existed in India during the last four years; and the Government of India are resolved to use their best endeavours to maintain, for the future, a considerable surplus of income over ordinary expenditure, and thus to make provision, beforehand, for any calls which are likely to arise on account of famines.'

"The original object was to secure a surplus of £1,500,000 and to devote it to the reduction of debt, or to productive public works; but subsequently when it was decided, after the report of the Famine Commission, to carry out a considerable scheme of railways, it was determined to devote a part of the Famine Insurance grant to the construction of what are known as protective railways (protective, that is against Famine,) and to works of irrigation, and the rest to reducing the sum which would have to be borrowed for the construction of productive works, whether railways or irrigation. At a later stage again the system now in force was adopted by which grant is devoted in part to the direct prosecution of railway and irrigation works, and in part to lessening our annual borrowings for such works; the former distinction between protective and productive having been discontinued. The combined effect of the application of the grant is to lessen our obligations by the amount directily expended in the construction of railways and irrigation, whether from Revenue or from Capital, and, in that sense, to reduce the debt. So long, however, as we continue to devote the item of one million and a half in whatever manner to the reduction or prevention of debt, so long, as we do not devote it to ordinary expenditure, so long will the Famine Insurance scheme continue to be operative. It may be employed in the reduction, or, which is the same thing, in the prevention, of debt, or in the construction of works, or by swelling our cash balances. But as so much has been said lately 'by the herd of such, who think too little and who talk too much,' as so much, I repeat, has been said about breach of faith, and I know not what, in respect of the Government and the Famine Insurance scheme, I wish to say here, in plain unequivocal language, that in my opinion it is quite open to question whether, in the event of a continuation or aggravation of serious financial difficulties, it would be expedient to continue the operation of a scheme which was conceived and brought into operation in order to assist, not to burden, the financial administration of the country. For example, if it were necessary to resort to excessive or to very obnoxious taxation in order to meet

expenditure which could be met by the suspension, temporarily or otherwise, of the present Famine Insurance scheme, it would certainly be the duty of the Government to consider whether this could not be done. If it comes to a choice between the general financial position and the particular position of a particular item in the Budget, the priority must unquestionably be given to the general position. In other words, we must sacrifice the scheme to our general needs, and not our general needs to the scheme. I think it necessary to make these remarks here, because it is very evident that the nature of the Famine Insurance project is very generally misunderstood, and, so far as I am concerned, I wish my views, and the grounds on which they rest, to be quite unmistakeable. The Government has very recently been charged, as it was charged in 1879, with breach of faith in having assigned to purposes of general administration what has been described as a fund set apart for a special object. The Government has done nothing of the kind, and has not in any way exposed itself to any such criticism. What has been the financial effect of the Famine Insurance scheme I may briefly illustrate by saying that through its operation the ordinary debt has been reduced since 1st April 1878 by £11,349,780; or by rather more than the figure of £1,500,000 per annum, which, it will be remembered, was the figure originally contemplated. *Gutta cavat lapidem, non vi sed sæpe cadendo;* and there seems, in some quarters, to be an idea that if you only drop false statements fast enough, you will succeed at length in wearing away the polished surface of truth. When the accounts of the year are published, it will be found that the Government has devoted the Famine Insurance grant to the purposes to which it usually is devoted. But in exposing the unreasonableness of the accusation which charges us with misappropriation of what has never existed, I have forgotten to explain why, in our present circumstances, we feel ourselves unable to turn for relief to the £1,500,000 which furnish the annual famine grant. The necessity for continuing to appropriate it as at present, and the grounds on which we do not desire to appropriate this grant to ordinary expenditure, is that we are embarked on a series of railway works, intended to protect the people from the effects of famine, which we are carrying out partly by the aid of this Famine grant; works which would otherwise have to be dangerously deferred or completed with borrowed capital. When those works are completed, it will be for the Government of the day to decide whether the amount annually devoted to the famine grant cannot at least be lessened. These are the grounds on which we consider that the Famine grant should not be interfered with. We recognise no separate fund; but we do recognise and confirm the necessity of carrying to completion the railway and irrigation works necessary for the protection of the millions of this country from

famine. But nevertheless I wish to repeat that if the sad necessity arose, from causes which I above glanced at, of appropriating the million and a half or a part of it, which at present is assigned to what is called the Famine Insurance grant, to other purposes connected with our ordinary expenditure, it is in my judgment perfectly open to the Government to do so; and it might in my opinion become extremely foolish to prefer vexatious taxation or excessive crippling of our ordinary needs in order to continue the working of a scheme which is excellent so long as it can be worked with convenience to the general financial administration, but which would become quite unendurable if, in order to maintain its existence, we were called upon to make exasperating sacrifices or impose extravagant burdens which were necessary for no other object than to keep this monster of our own creation fed with the funds necessary for its sustenance.

"I come then by a process of elimination to the third and last resource which is open to us, namely, to direct taxation, and I do so with a perfect knowledge of the delicate ground on which I am supposed to be treading. The financial history of the last 25 years is strewn with the skeletons of discussions on direct taxation, and more than one of my predecessors is gibbetted on that dismal Golgotha for the part which he took in connection with it. It has been my duty, in the course of my studies on the subject of direct taxation, to read again lately the various debates upon that much-vexed subject in which at different times my predecessors took part during the 20 years between 1860 and 1880. I have, in truth, but just emerged from them, like Œneas from visiting his ancestors in the Shades, and I am still overwhelmed, and overcome with the sulphurous atmosphere in which I have lately been groping my way; atmosphere, 'From whose flames no light, but rather, darkness visible—Regions of sorrow, doleful bodes where Peace and Rest can never dwell.' So that I am not likely to underrate the oppressive climate of the region into which I am doomed to re-enter, and into which I must invite the Council to follow me. The aphorism of Burke, quoted by one of the most distinguished of those who have held my present office on an occasion similar to the present, that 'it is as difficult to tax and to please as it is to love and be wise,' is one the truth of which has been illustrated in the person of almost every one of my predecessors, and will, I have little doubt, be once more illustrated in mine. But in spite of what has gone before and in spite of what remains to be said, (and I fear that we shall find during the next few months that a good deal remains to be said,) there can, after all is said and done, be no manner of doubt, but that one great fact remains established; one great blot on our administration not only still unremoved, but aggravated by the course of events in recent years. It is this, that, putting aside those who derive their income from land in the temporarily-settled districts, the classes in this country who derive the greatest security and benefit from the British

Government are those who contribute the least towards it. Many opinions of many kinds have from time to time been expressed as to the nature of the advantages or disadvantages introduced into this country by British rule, but on one point all (even the most envenomed and hostile of our critics) are agreed, and that is that it has given greater security to life, property, and trade and to the amassing, therefore, of wealth, than any Government that ever preceded it. Yet notoriously the mercantile and professional classes, to whom this time of sunshine has brought such an abundant harvest, are precisely those who contribute least towards the support of the Government in the light of whose power they bask. We are constantly assured, for example, by journalists in this country (who, in their capacity of journalists, by the way, make a considerable untaxed income in pursuit of their efforts to bring home to us this assurance,) that the limits of taxable resources have been reached. Whatever may be the case with the poorer, or the lower middle class, the upper middle and the upper classes, in spite of our friends the journalists, enjoy the greatest immunity from taxation. If this was true before the abolition of the ifport duties, and the reduction of the salt duties, it is still more unanswerably true now. I know that what I have said as to the immunity of the middle and upper classes from their due share of the public burdens is as a twice-told tale, vexing the dull ears of a drowsy man; but it is nevertheless a grievous blot on our Indian administration, which urgently calls for removal, and which, I believe, with patience, prudence, and the exercise of a little fortitude, must and will be removed. Efforts have indeed, at various times, been made to remedy this scandal, for scandal it is of the greatest magnitude when the poorest are called upon to pay heavily for the support of the Government, and the wealthier classes are exempted; but from one cause or another the measure has never been carried out, except for short and broken periods of time. Then, again, there is another and a very important and very decisive element which has been introduced into the question since it was debated in this Council Chamber in the days of Lord Mayo. It is this, that when the indirect duties were swept away or lessened, it must have been obvious to all, to the most indifferent observer no less than to the intelligent student of Indian finance that, should difficulties recur, economy and direct taxation were the only alternatives possible. As a reserve, indeed, we could, consistently with the policy which removed the import duties, raise the salt duties; but a reserve necessarily from its nature should not be made use of till other possibilities have been exhausted. The action of the policy of the Governments of Lord Lytton and Lord Ripon in respect of the import duties upon our future policy in respect of taxation in India was well put by Sir A. Arbuthnot in the debate of March 2, 1880, when he said :

'Therefore, my Lord, while speaking as an individual member of this Council, I deeply regret the policy which has deprived the Government already of a portion of their

indirect revenues, and which threatens to exterminate an important branch of those revenues altogether; while I view that policy with the gravest apprehension, I cannot but recognise the fact that, as a result of that policy, a permanent system of direct taxation may prove to be inevitable. And if it shall so prove, if events shall so turn out that the Government of this country shall deem it necessary to retain such a system as a permanent part of their fiscal system, I feel bound to say that, in my opinion, it will be incumbent open the Government of India to place that taxation on such a basis that it will touch not only the trading community, but all the comparatively wealthy, and especially all possessors of realised property, and to discard the present license tax, which, notwithstanding the remedy afforded by the Bill before the Council, still falls unduly on the comparatively poor, and too exclusively on one class of the community.'

"There can be no manner of doubt that, as Sir Alexander Arbuthnot said, direct taxation is the necessary and legitimate result of the measures adopted in preceding years. The financial policy of the Indian Government since 1878 has pointed steadily at direct taxation. From that year onward, he that ran could read the indications of the time. In point of fact, for the last 8 years we have had direct taxation; but in a form so incomplete and so open to criticism that it was impossible not to foresee that it must be, on the first convenient opportunity, replaced by some measure more equitable in itself, and more suited to the circumstances of the country. An attempt has been made, and is still in operation under the form of a License Tax, to carry out direct taxation in part, but it is open to the vital objection that it presses most heavily on the poorer among the trading, mercantile and commercial classes, and leaves the wealthier besides other whole classes of the upper part of the population comparatively or absolutely unassessed. Almost from the day of its introduction efforts have been made by public bodies in this country, both English and Native, to obtain, instead of the existing License Tax, a more equal distribution of direct taxation, and acknowledgments have been tendered by the Government of the evils inseparable from that Tax as at present enforced, and of its determination, when a fitting opportunity arose, of putting it on a more equitable footing. In point of fact, so far had the matter gone and so ripe was it for settlement, that if no financial necessities had now overtaken us, we should have been imperatively called upon, in any case, very shortly either to abandon direct taxation altogether, or to take some measure of the nature which we now propose to introduce. It was impossible to go on from year to year admitting and deploring the evils of the existing tax and doing nothing whatever to remedy them. That was how the matter stood till the commencement of this year. We had the choice of abandoning direct taxation or of extending it; and we were in such a position that we could no longer decently delay making up our mind to adopt one or the other. But we no longer have even the choice now. As circumstances stand, for the reasons which have been, I trust, sufficiently explained in the course of these remarks it is obviously impossible to us, even were it desirable, to

abolish direct taxation; for we cannot spare the half million which it brings into the Imperial Treasury. Nor, again,—and mark this, for it is an important point,—if we abolished the License Tax, and with it all direct taxation, could we justify the retention of the cesses on land which were introduced simultaneously with it in 1878. What was said by Sir John Strachey in 1880 is equally applicable now: 'It would be hardly possible to maintain the cesses on the land, if the tax on trades were abolished. It might be more possible to defend the abolition of the cesses on land and the maintenance of the tax on trades'. So that we should have, if we let the License Tax go, to let the cesses on land go also, which is altogether out of the question. The only alternative, therefore, that remains is to carry out our oft-repeated pledges and to fulfil the promise, which we have on numerous occasions made to various public bodies in this country, of extending the operation of direct taxation in such a manner as to remove the anomalies complained of, and justly complained of, by those at present assessed to it. In doing so, we are not only fulfilling our pledges, but giving effect to them in a way which is in strict harmony with the policy pursued by our predecessors. In the Financial Statement of the present year, I said that should we be called upon to increase our revenues we should feel ourselves bound to do so on the lines of the policy adopted in 1882-3, and in conformity with the principles by which it was inspired. We are acting consistently with those principles when we propose to afford, as far as possible, relief in taxation to the poorer classes, and before calling on them for further contributions, to exhaust all methods of increasing our revenue which are independent of their sacrifices. If we are bringing under contribution some 80,000 new persons, of whom a large part are officials, and of whom all are in comparatively easy circumstances, it is because we refuse absolutely to emancipate this small handful from taxation by adding to the burden of the 180 million who earn their bread by the sweat of their brow, and on whose shoulders the burden of the too vast orb of the public fisc at present practically rests. I do not therefore come before the Council to-day as an apologist for direct taxation. I have no intention here at this present moment of entering upon any examination of the merits or demerits of direct taxation in India or of anticipating the objections to it which, at a later stage of this Bill, may very probably be urged upon this Council. I think it very possible that the venerable old weapons of attack, the arquebuss of 1860, and the muzzle-loader of a later day, will be furbished up and brought out with the last weapon of the moment and once more will be levelled at us; that the imposing structure of former discussions will be lugged from its resting place and paraded round and round this Council Table with its sable nodding plumes, its gloomy trappings, its scenic accessories of word painting, and its motto of *sæva indignatio*. But I should like to point out at once, in order to obviate misunderstanding and profitless discussion here-

after, that objections based on the experience and former arguments employed in reference to an Income Tax, must be considerably modified if they are to be aimed at the measure which we desire to-day to introduce. The measure which I wish for leave to introduce is in many respects a different measure from those which have been hitherto placed upon this table in the form of an Income Tax. In the first place, it is built on the foundations laid nine years ago for the License Tax, and is not an introduction but an enlargement, an extension and equalisation, of direct taxation. Next, it will be found that it leaves the present License Tax undisturbed in the case of the lowest class of incomes, except so far as it adds professions and offices to trades and dealings. It aims at maintaining an average assessment of 2 per cent. on incomes below R2,000, the rate at and above R2,000 being about 2½, or five pies in the rupee, but falls at a sensibly lower average rate on all incomes between R500 and R1,250. It exempts, like the present law, all incomes below R500 per annum from taxation. Of the present assessees, 122,000, so far as we can at present calculate, will have their present assessment entirely undisturbed; the assessment of about 100,000 will be more or less raised. It takes no account whatever of land assessed or liable to be assessed to revenue whether in the permanently or temporarily-settled Provinces. The combined schemes will not affect more than about 300,000 persons only, officials included, out of the whole population of British India. The measure, in a word, aims at meeting the objections of those who, while more or less opposed to an income tax as generally understood, have, at different times in speeches before this Council, or elsewhere and in other ways, intimated that they concur in the conclusion that the more well-to-do classes should be taxed; and that if they could not be reached otherwise they would be prepared to agree to direct taxation, on lines such as those we are now following. At a later stage of the proceedings connected with this Bill I shall be prepared, if necessary, to produce ample evidence in support of what I have now said, and to quote the several authorities to whom I allude. Avoidance of inquisition, especially in the case of the smaller incomes, maintenance and continuity of existing rates and estimates, a liberal figure for exemption from assessment, a moderate rate of assessment,—these are the conditions in which even avowed enemies of an income tax have intimated in this Council their willingness to see direct taxation incorporated, as we desire to incorporate it, as a part of our fiscal system. All this we have set ourselves to meet, as will be evident on examination of this Bill. We estimate, finally, that it will give us about £620,000, additional to the £500,000 which is the yield of the present License Tax, leaving a small balance on the £700,000 we require which we should have no difficulty in meeting.

"I do not conceal from myself that in some ways the present is an unfortunate time for the re-introduction in India of an assessment on salaries

and in a less extent on mercantile incomes, owing to the uncertainty and hardship connected with the present state of the silver market. I have no wish to make light of this difficulty; far, very far from it; it is grave one; and I know only too well that the state of the silver exchange is severely felt in a large number of Anglo-Indian households. More or less it affects us all, increasing the difficulties of one in finding adequate funds for the education of his children, to the other diminishing the economies which he looks to to facilitate his retirement, and to support him in later life, and thereby prolonging the period of his service in India. All this I know, as I have said, only too well. But I know equally well that we are of necessity compelled to turn to the tax-payer for fresh resources, and that if we do not look for them to the comparatively wealthy, we must turn to the positively poor. The choice lies between the classes who have or who can make for themselves a margin, and those who have no margin at all. It is on the *misera contribuens plebs* that an increase of the salt tax, or a re-imposition of import duties such as the Madras Chamber of Commerce have lately advocated, would fall. We are all, I am aware, concerned in the measures necessary for the safety of the Empire, but I may remind this Council that it is certainly not the middle or the upper class of Native or the Anglo-Indian merchant or official who are least concerned. So that neither in this regard can I come before this Council as an apologist. In the necessities of the time,—in the interest of all classes of the community,—in the present incidence of our Indian taxation,—in the legitimate and necessary result of the financial policy pursued by our predecessors,—in the admissions of these who oppose an income tax,—will be found the justification of the measure which I now have the honour to ask Your Lordship to allow me to introduce. I have shown what our financial position is; I have added that, while we are not forgetful of economies, we cannot hope, in the ensuing year, for any great relief in this direction; I have stated why, in our opinion, resort to indirect taxation is undesirable; I have pointed out that direct taxation is the necessary outcome of the financial policy of the last 8 years; I have drawn attention to the provisions of the Bill to prove that it is framed with a view to profiting by the great experience which in a quarter of century we have acquired; I have glanced at the objections which may be urged in view of the silver exchange, and while deploring its effect on the position and the circumstances of so many here in India, I have given my reasons for thinking that, objection for objection, there is more to be said in favour of the struggling silent masses than of the few on whom addition to their present difficulties will fall; and I now look to the candour and intelligence of my hearers to decide whether in these circumstances some revised form of direct taxation is not inevitable, and whether direct taxation in the form embodied in the Bill which I wish to lay before the Council is not unquestionably a course which is more

free from objection than any which can be urged upon our attention as alternative."

His Excellency THE PRESIDENT said :—

"As Sir Auckland Colvin has made so complete and lucid a statement of our present financial position, and the reasons which have compelled the Government of India to introduce the present Bill, it would have been scarcely necessary for me at this stage of the proceedings to trouble you with any observations of my own, did not I think it my duty to seize the earliest opportunity of taking upon myself, as the Head of this Government, the full responsibility of a measure which, however imperative, must by its very nature prove extremely unpopular. The Financial Member in taking the initiative has merely discharged the technical duties attaching to his office, and he is no more responsible for the policy upon which we have determined than any other member of the administration, inasmuch as the causes which have created the difficulties with which we are about to grapple have in no way resulted from circumstances over which the Financial Department have had the slightest control. Before, however, I touch upon that part of the subject which concerns the future, it is but right that the Indian tax-payers, and the Indian public generally, should receive a full explanation in regard to the past, and to the causes which have occasioned the actual deficit which will confront us at the conclusion of the present financial year. That deficit, as you have been already told, will probably amount in round numbers to £2,800,000. The principal portion of this sum, which may be put roughly at a couple of millions, is due to those preparations which we were compelled to make on our side of the water in view of a possible contest between Great Britain and Russia. The nature of the crisis to which I allude was thoroughly understood from one end of India to the other. Its gravity was fully appreciated, and there probably has never been a more gratifying feature in the history of this country than the way in which all classes of Her Majesty's subjects came forward, not merely with a unanimous expression of loyalty and devotion to the throne and to the person of the Queen Empress but, in numerous instances, with offers both of personal and material assistance. In these circumstances, it scarcely is necessary for me to show that the expenditure which we at that time incurred was necessary and inevitable. It will be sufficient for me to point out that so imminent was war considered by Mr. Gladstone and his Colleagues that the reserves were called out and a powerful fleet was equipped by the British Government, at an expense of six and a half millions. I imagine that no one will care to suggest that, while these sacrifices were being made by the English tax-payers with the view of maintaining the sanctity of the North-Western Frontier of India, India herself should have remained a listless spectator of the scene, and have done nothing for her own defence. But though we felt it incumbent upon us to prepare for

what then appeared the probable contingency of war, we restricted our precautionary measures to those which the barest necessities of the case required. We contented ourselves with providing such an amount of transport and stores as would enable us to place a corps d'armée of observation on our own frontier. We did not mobilise a regiment, or move a man or spend a penny otherwise than on these initial and elementary measures, and had any Government done less, it would have deserved impeachment.

"The other items of the deficit have been occasioned by the construction of a temporary line through the Bolan Pass from Rindli to Quetta, and by our military operations in Upper Burma, the cost of the latter of which has been estimated for the current year at £270,000. With regard to the first of these projects, the Bolan line, I need not say much. It is well known how fatal to the lives of our soldiers and how intolerably expensive has been in times past the despatch of troops on foot along this fatal road. A considerable period must of necessity elapse before the Harnai route can be completed, and were a war to occur there is no doubt that the existence of direct and through railway communication to Quetta would save thousands of lives, as well as the original cost of the railway many times over.

"As to the Burmese war, though it is not perhaps a very fitting opportunity for explaining the policy of the Government, there are one or two observations it might be opportune for me to make in regard to it. That our proceedings in the matter have been almost unanimously approved of in England has long since been sufficiently apparent. In this country, however, a different view has been taken of the affair by a considerable proportion of the native press. That this should be the case has not at all surprised me, and I readily admit that the instinctive aversion so many of our native friends have shown to the Mandalay expedition has been both natural and reasonable. As a general principle, it is not desirable that either the limits or the political and financial responsibilities of the Indian Empire should be extended, and every Indian tax-payer is perfectly justified in apprehending that every war, no matter upon how moderate a scale it may be conducted, or how successful its issue, must add to the public burdens. Nor, indeed, can we expect that those larger and predominant considerations which dictated the line of action we have followed should be present to the minds of the great mass of the Indian people. To them Burma is a remote and foreign country. The history of our relations with the Government of King Theebaw during the past years is alike indifferent and unknown to them, and we must not be surprised if the inhabitants of Lahore, or of Trichinopoly, Benares or Multan should fail to remember that for thirty years Lower Burma has formed an integral part of the Indian Empire; that it has contributed its full share, and as the Burmese allege, more than its full share, of taxation to the Imperial

Exchequer; and that anything which affects its security or welfare must of necessity prove of as deep concern to the Government of India as if it lay in the heart of Her Majesty's Indian possessions. A variety of concurrent circumstances made it only too evident that the future of Lower Burma would be seriously compromised unless we came to some satisfactory understanding with the Government of Mandalay in respect to the various outstanding complaints which for years past we had been vainly preferring to the Burmese King. An honest and sincere endeavour was made to reach an amicable settlement, but our well meant intentions were frustrated by the folly of the Ruler, and we were forced very reluctantly to undertake the conquest of the country. Thanks to the skill, the prudence, and the humanity with which the expedition has been conducted by General Prendergast, and to the zeal and energy displayed by Her Majesty's forces of both services, English and Native, the Capital of Upper Burma has been occupied, it may be said almost without bloodshed, and certainly without engendering any bitterness of feeling between ourselves and the Burmese people. That these proceedings will entail a certain amount of cost cannot be denied; but, without endorsing the complaint of the representatives of Burmese interests, who maintain that the Indian Exchequer has unduly profited for many years past by the exorbitant amount of Burmese revenue which it absorbs, it will probably be found, when the debtor and creditor account between India and Burma is finally examined, even after the expenses of the present war have been duly debited, that an ultimate balance sheet will be shown which may by no means prove unsatisfactory to the Indian tax-payer. As to the degree to which the revenues of Upper Burma may suffice to provide for the wants of its own administration in future, nothing at present can be said. It was necessary, of course, once the conquest of the country had been effected, to determine and to declare for diplomatic purposes its international status. This has been done by the Proclamation of the 1st of January, under which the authority of the Viceroy is substituted for that of the late King. Such an arrangement, however, though required by the actual circumstances of the case, will eventually be replaced by a more fully regulated system, the nature of which will, in all probability, not be determined until I have myself visited Mandalay, and been in a position to submit a report to the Queen's Government at home.

"Having now dealt with the causes of our actual deficit, and one or two subjects cognate to them, I will ask permission to make a few further observations in regard to the Bill we propose to introduce. The object of that Bill is to impose a tax upon those classes who at this moment contribute nothing, or only contribute in a very imperceptible degree, to the Indian revenues. On the necessity for strengthening our present financial position I will not enlarge. Sir Auckland Colvin has clearly shown that the financial position

of the country is gravely imperilled by a harassing uncertainty in regard to the future of silver. The fall of a penny in the price of silver at once adds, in round numbers, a million to our expenditure. In this manner, since I entered upon the duties of my office, an additional charge of a million sterling has been laid upon our shoulders; and though I trust that the depression of the metal may have reached its lowest limit, the possibility of a further fall, and the consequent presence of an element of uncertainty in all our accounts, renders it absolutely incumbent upon the Government to take such precautionary measures as the circumstances of the case permit. After consultation with a number of persons, both English and Native, who are entitled to speak with great authority upon such questions, we have framed the provisions of the present Bill, and from first to last the utmost care has been taken to render their application both equitable and as consonant to the habits and feelings of those affected by it as possible. I am aware that in all Eastern countries there is great objection to anything approaching to direct taxation, and I might have hesitated to give my assent to such a measure as the present if it had been an unprecedented essay in that direction; but so far from this being the case, direct taxation has for some years past formed a portion of the fiscal system of India. The license tax is a tax essentially direct both in its principle, its incidence, and its application, and so far as I have been able to learn by enquiry, or to gather from the public prints, the opposition which this impost originally encountered has in a great measure subsided. Its assessments have been gradually brought into harmony with the real status of those who have been subjected to it. Its inquisitorial character has been eradicated, and it is now submitted to with as much cheerfulness and good humour as is compatible with the infirmity of human nature. The necessity then of some addition to our public revenues being admitted, the Government naturally considered that the extension of a tax similar in principle to the license tax to those classes of the community who are not subject to its operation was both a just and a desirable expedient. The only alternative open to us was to re-enhance the salt tax; but though this would have been an indirect tax, and consequently not so unpopular as the one we are about to impose, its operation would have chiefly affected the poorer masses of the community. Now, I am very far from wishing to say that in the presence of any overwhelming necessity, such as that of a great war or a great famine, it might not be necessary to raise the duties upon salt. It would be by such a measure alone that a great emergency of the kind could be met, and all minor considerations would have to be postponed to the imperative necessities of the hour; nay even something short of either of these calamities might justify us in resorting to it: but when the situation merely requires a comparatively slight addition to our current revenue, it is obvious that any honorable man who had to choose between taxing the most indigent classes who already contribute at

considerable share of the public burdens, and taxing those classes who, though in easier circumstances, scarcely contribute anything, it is to the latter alternative that he would resort. This at all events is the conclusion that the Government of India has come to in the matter. We look abroad, and we see that the peasant pays his salt tax, which, though it has been reduced, still supplies us with a yearly net revenue of £6,000,000; that the landowner pays his land tax and his cesses; that the tradesman and the merchant pays his license tax; but that the lawyer or doctor, the members of the other learned professions, the officers of Government, and other persons occupying an analogous status, and the gentleman at large pay little or nothing. I look around this very table, and what do I see? that there is not one of us into whose pocket Sir Auckland Colvin is able to get so much as his little finger. For instance, take my friend Mr. Mandlik, a most eminent and distinguished member of the legal profession. He will admit, I am sure, that his qualifications to rank as a tax-payer are of the most microscopic proportions. The same may be said of my friend Mr. Peári Mohan Mukerji, except in so far as he may be a landowner; but whatever revenues he derives from land are exempted from the operation of this Bill. I might make the same appeal to most of our other colleagues, and, what is equally sad, I am forced to make an identical confession in regard to myself and to the members of the Government. There is not one of us who pays any really serious sum from his income into the Imperial Exchequer.

"Now, surely, this cannot be right, and to such an anomaly it is no answer to say that direct taxation is repugnant to oriental customs. Justice is the inhabitant neither of the East nor of the West. She admits no geographical limits to her supremacy, her throne is on high, and sooner or later, in spite of prejudice or custom, she never fails to vindicate her title to the respect and veneration of mankind. It is then in the name of justice that we propose the imposition of this tax, and we feel assured that every fair and right-thinking man in the country, no matter how his private interests may be affected by our action, will recognize that no other course was open to us. Indeed, already I see that no less intelligent a body than the congress of Indian delegates lately held at Bombay have forestalled our conclusions, and have passed a Resolution, recommending, in default of other expedients, the extension of the license tax to those members of the community who hitherto have enjoyed an undeserved immunity from the visits of the tax-collector.

"But, though I do not anticipate that any serious objections will be raised to the principle of the Bill, it is possible that adverse criticisms may be passed upon some of its details. I need scarcely say that the most searching criticism, especially if accompanied by practical suggestions, will be very

welcome and will receive from the Government most careful and impartial consideration. I do not anticipate, however, that any great changes will be necessary, because great care has been taken to divest it of all those unsatisfactory characteristics which have hitherto rendered the imposition of direct taxation so unwelcome. Warned by the experiences of those who have gone before us, we have carefully eliminated from our Bill everything that rendered former measures of the kind odious and obnoxious. In fact, our project is merely an expansion of the license tax. The license tax is a one-storied house, and on the top of it we are putting a second storey, but the order of architecture in both will be the same; and as the foundations of the one have stood the test of time and of popular criticism, so I trust will the walls of the other possess the same solid characteristics.

"But there is now another aspect of the question to which I am bound to refer. Following in the steps of Sir Auckland Colvin, I have shown, I trust in a perfectly conclusive manner, that the instability of silver, and the loss by exchange we have sustained during the current year, have compelled us to strengthen our financial position in the manner I have described; but, besides this, other unexpected calls upon our revenue have arisen, which have also had their influence in determining us to introduce the present Bill. A few short years ago, India was an isolated region, cut off from the rest of the world, on two sides by the sea, and on the third by a range of mountains whose further slopes were inhabited by populations destitute of modern arms, unskilled in the arts of war, and from whom no serious acts of aggression were to be apprehended. But within a period of startling brevity this situation has been completely revolutionized. A great European Power has advanced its confines by sudden leaps and bounds into what by comparison may be called close proximity to our own frontier. It is true, several hundred miles still separate the territories of India from those of Russia, but the intervening space is ruled by a Prince in close alliance with ourselves, whose interests are cognate to our own, and the invasion of whose territories we are solemnly pledged to resent so long as he conducts his external relations in accordance with our advice and wishes. I do not propose to waste the time of the Council by entering upon any justification of the arrangements out of which the foregoing obligation has arisen. They were made by my illustrious predecessor, to whose good management and wise conduct of the affairs of the North-West we are indebted for a united Afghanistan and a friendly Afghan Ruler. But whatever their character, they have to all intents and purposes brought, though in an indirect manner, the area avowedly dominated by our political influence and ascendancy into direct contact with one of the greatest Military monarchies of the day. Under these circumstances it would be the height of folly upon our part if we did not recognize the change which has taken place in the external position and relations of the Indian Empire. My

own opinion is that the counsels of Russia are controlled by a just and peace-loving Emperor, and inspired by a moderate and unaggressive Statesman; but those who have watched the recent current of events in Europe and the origin and causes of some of the most bloody wars of the last thirty years, must be aware that the hands of Monarchs, however powerful, and of Ministers, however conscientious, are violently forced and their most earnest desires countervailed by a hundred disturbing influences. The accident of a moment, a wave of popular prejudice or passion, the influence of a subordinate but powerful party in the State, a chance collision between distant pickets,—each one of these, or all combined, have been and will be again sufficient to bring the nations of the earth into disastrous collision. But for the accidental circumstance of the Amír being in my camp at Rawal Pindi, and the fortunate fact of his being a Prince of great capacity, experience, and calm judgment, the incident of Penjdeh alone, in the strained condition of the relations which then existed between Russia and ourselves, might of itself have proved the occasion of a long and miserable war. But, not only so, there are other contingencies and untoward possibilities which must occur to the mind of every one, though it may not be desirable or prudent to specify them in detail, which, were they to happen, would still further accentuate the change in our circumstances which the entry of Russia into the Valley of the Hari-Rud, and her advance to the borders of Maruchak, Maimena, and Balkh, have occasioned. If then the situation is such as I have described, and I have endeavoured to shape my language in accordance with absolute fact and the suggestions of plain common sense, it is evident that we should be neglecting a grave and obvious duty did we not follow the example of all civilized communities under such circumstances, and place our frontiers in such a position of defence and impregnability as will render us comparatively indifferent to the changes and chances of the outside world, and restore to us that feeling of security and independence of others which is absolutely essential to the stability of our credit and the healthy condition of our finances. These necessities have been equally admitted by the late and the present Governments of Great Britain. During a remarkable debate which took place last year, the representatives both of the Conservative and of the Liberal parties united in recognizing the necessity of completing with as little delay as possible such a system of defensive Railways, fortifications and other works along our North-Western Frontiers as would effectually bar our doors against all chances of annoyance from beyond them, no matter from what source they might proceed—whether occasioned by a foreign foe or by any change of policy on the part, I will not say of the present Ruler of Afghanistan—for of his steadfastness and fidelity we have received satisfactory proofs—but on the part of any of his successors. With such a consensus of opinion in the Parliament of Great Britain, the Government of India had no difficulty in

discerning what line of action to adopt Some very complete and well-considered projects for the construction of military railways wherever strategic considerations might require them to be laid had already been drawn up by the late Viceroy and accepted by the Secretary of State, and during the past summer the military authorities here, in conjunction with those at home, have been elaborating a plan for the erection of such places of strength, fortresses and fortified positions, as may be best adapted for the purpose we have in view. In doing this we shall be merely following the example of every other nation in the world, who, no matter how friendly may be its relations with its various neighbours, rightly feels that its security and peace should not be allowed to depend upon their good-will, however genuine, or their professions of amity, however sincere, but upon their own valour and prudence, aided by such means as military science can suggest for the protection of their borders.

"It has also been determined for the same reasons to increase to a moderate degree the numbers both of the British and of the Native forces in India This is a measure which the late Commander-in-Chief, one of the most economical, sagacious, and prudent officers that ever occupied that high position, most earnestly counselled, and the necessity for it has been impressed upon us in an equally emphatic manner by his present distinguished successor, as well as by other persons entitled to speak with scarcely less authority. But, though anxious and ready to give every proper consideration to the recommendations of those who are the legitimate advisers of the Government of India in these matters, we felt that due regard had also to be paid to the financial exigencies of the situation. Consequently, the addition we propose to make to our present forces falls considerably short of the figure desired by Sir Donald Stewart and other high military authorities both here and at home. In coming to this conclusion the Government has felt that it was incurring a very grave responsibility, but still, on balancing the conflicting considerations forced upon our attention, we are convinced that the more moderate limit we have adopted is the one best suited to the circumstances of the case.

"Unfortunately, precautions of this kind cost money, and the necessities of the case require them to be pushed with energy and rapidity, and, although the expenditure needed for the greater proportion of these works will be, as heretofore, provided by loan, (and by sums refunded to us from time to time by the private Companies to which Government Railways may be transferred), we shall have of course to pay the interest on whatever sums we borrow. Then again there are three Famine Railways which have been already commenced, and which the Government are determined to complete with all despatch, namely, two in Madras and one in Northern Bengal. And here perhaps I may take an opportunity of correcting an error which has been frequently made, and which seems to return to new life each time that it is corrected, namely, that any inroad has been made upon the Famine Grant,

When I arrived in the country, I found that the system which had been followed by my predecessor had been to apply half a million a year from the Famine Grant to Famine Railways; £250,000 to Irrigation Works and the remainder of the Grant to the diminution of debt. The justification for its application to this latter purpose has been so fully set forth and explained in a speech of Sir Evelyn Baring's that I need not say any more upon that head. Such was the system I found in vogue when I arrived in India, and during the current year that is the exact system which has been followed. These facts are perfectly well known to all that are acquainted with the subject, and now that I have myself re-stated them in Council, I trust that the foolish ghost of this perennial fiction has been once and for ever laid. In fact, I may say, that, so far from diverting the Famine Grant to extraneous purposes, there is nothing which myself and my collegues have so strongly urged upon the Secretary of State as the desirability of continuing the policy sanctioned by our predecessors, at all events until we shall have reached a stage when our Famine Protective Railways shall have sufficiently multiplied to compress within tolerable bounds the chance of such casualties from famine as have desolated the land in past times. But, though such is our intention and desire, we have thought it perfectly consonant with the principles I have enunciated to ask the Secretary of State that, instead of making all these Famine Protective Railways ourselves, we should be permitted to apply a small proportion of the Famine Grant to the payment of interest to certain companies whom we propose to entrust with the construction of special lines possessing a protective character, and which, by their completion, will diminish the evil consequences of bad seasons in various threatened districts.

"Such, Gentlemen, are the circumstances under which the Government of India have asked this Council to give leave for the introduction of the present Bill. Stated briefly, our chief justification for the measure is to be found first of all in the extraordinary fall of silver which has recently taken place, and in the uncertainty which prevails as to the future fluctuations which may affect its value. In the presence of such a state of things, the strengthening of our financial position became an absolute duty, and the performance of this duty has been rendered still more incumbent upon us by the necessity, which has been equally recognised by every shade of public opinion in England, of strengthening our frontier defences, and prosecuting with energy the completion of our Frontier Railways. In determining the amount of money to be raised, we were very careful to limit it to the minimum sum which we thought it safe to ask for, and you may be satisfied that in carrying out the programme which has been determined upon, the Government will be careful to square its efforts with the means at its disposal. All the works which are contemplated cannot, of course, be carried out at once, and by the

exercise of prudence and discretion, and by a wise adaptation of the means at our disposal to the ends in view, it may fairly be hoped—unless some unforeseen catastrophe should overset our calculations—that with this slight addition to the taxation of the country, which as I said before will merely touch those who hitherto have contributed but slightly to the public burdens, we shall be able to carry out our programme. Nor need we by any means despair of a very considerable proportion of the expenditure to which I have referred proving remunerative. Railways of course which are simply constructed for strategical reasons cannot be expected, as they are not intended, to prove profitable commercial speculations; but it so happens that the two principal Railways which are to subserve our Military needs will run in such a direction as in all probability to become of the greatest service to commerce. As every one knows, the caravan route which connects Hindustan with Persia and Central Asia runs through Quetta, and the goods which are now conveyed on camels' backs to the proximity of the Indus may be expected to feed the chief of these lines with a continually growing traffic. Again, the Sind-Saugar Railway, which will enable us to move our troops along the whole face of our frontier, may from the peculiar circumstances of its location eventually become a considerable commercial artery. These results, however, are only subsidiary to the main purpose of the two lines in question, and I merely mention them as affording some consolation to those of us who like myself have an instinctive dislike to purely Military expenditure.

"It only remains for me, Gentlemen, to thank you for the patience with which you have listened to me, and to apologise for the length of my observations; yet there is one thing which I desire to say before I conclude. Although I have not the slightest doubt or difficulty in recommending you to agree to the introduction and to the eventual passing of this Bill, I cannot help desiring to express my extreme and heart-felt regret that the occasion should have arisen for legislation of this description. The imposition of taxes is always an ungrateful task to any Government even when its measures have received through their representatives the sanction of a majority of the people. The performance of such a duty to persons situated as are my colleagues and myself is still more irksome. When I reached the shores of India, I had marked out for myself a very different programme. For five years the country had been administered by a wise, cautious, and distinguished Statesman, who had devoted his attention to the internal welfare of Her Majesty's Indian subjects. Peace reigned from one end of the land to the other; and though our Financial Member could not boast of more than an actual equilibrium between our resources and our expenditure, there was no reason to anticipate until some months after my arrival that anything was likely to disturb the even tenor of our way. My predecessor having had such excep-

tionally favourable opportunities for introducing reforms, and of bringing the institutions of the country into harmony with its growing wants and aspirations, my ambition was confined to the humble intention of watching the effects of his policy, and tending and watering what he had planted. We all know how rapidly these prospects have been overclouded by a succession of adverse circumstances over which this Government has had no control; and now, at the expiration of the first year of my term of office, I and those associated with me in the government of the country find ourselves driven to a course of action which cannot fail to cause inconvenience to certain classes of our fellow-countrymen, whose worldly trials and troubles are already sufficient, I dare say, to try their patience and fortitude to the utmost. Let me assure them that, at all events, neither my colleagues nor I have failed to comprehend the many sacrifices which the imposition of this taxation, moderate as is the scale we have adopted, and comparatively few as are the individuals it will affect, cannot fail to entail upon many of them; and most deeply do we lament the necessity of subjecting them to the ordeal. These observations more especially apply to those Anglo-Indian servants of the State who are compelled by their domestic necessities to transmit to England the greater part of their hard-won earnings for the support of their children. That very depreciation of silver from which the revenues of the State have so greatly suffered has also made itself felt in their case with the most bitter severity. On the other hand, however, it must be remembered that only five years ago three millions of taxes were remitted by the Government of the day. The amount of taxation which we are about to impose will not probably bring in more than six or seven hundred thousand pounds, so that when all is said and done, the inhabitants of India will be still left the enjoyment of more than two millions of the taxation which was remitted in 1882 by Sir Evelyn Baring. Indeed, if an actual calculation were made, I think it might probably be shown—at all events in the case of the wealthier classes we are now bringing into our net—that the gain they have derived from the remission of the import duties compensates them in a considerable degree for the additional import to which they are being subjected. Be this, however, as it may, whatever the sacrifice, whether it affects the Anglo-Indian or the native servants of the British Crown—of this I am sure, that if they are once convinced that the measures proposed by this Bill are necessary to maintain unendangered the honour of the Queen-Empress and the safety and security of the Indian Empire, and of the millions of hearths and homes it contains, as well as the stability of our public credit, they will cheerfully submit to them. The offers of assistance forwarded to me during the course of last summer in so generous a manner by the Princes, Zamíndárs, and leading men of the country more than justifies such an expectation. But the days are past for supplementing the resources of the State by private benevolences. The only fair and effec-

tual way of accepting the assistance we have been proffered is by recommending to the generous acceptation of the people a fair, just, and equal measure of taxation. This in our hearts and consciences we believe we have done. But there is one other measure by which we intend still further to fortify our financial position, and to protect it from whatever changes or chances the future may bring forth. Although from time to time during past years frequent endeavours have been made to examine the great machine which constitutes the Indian Government, with the view of rendering its operation more effective and economical, much I cannot but believe still remains to be done in that direction. As you are aware, the Government of India itself controls but a part of the expenditure of the country, so large a proportion of the Imperial resources having been confided to the control of the Provincial and subordinate Administrations. Very soon, however, the Provincial contracts instituted between ourselves and the Local Governments will expire; and it will be necessary, especially in view of the circumstances to which I have referred, most carefully to review them. At a time when fluctuations in the currency are threatening the stability of our whole financial system, and when the possibility of external commotion is darkening the political horizon, it is very evident that the duty of economy and retrenchment ought to be prosecuted with the utmost energy and decision. Already we have initiated this policy with effect; and by an appeal to the Provincial Governments, which I must say was answered with the greatest loyalty, we have to very considerable extent been compensated for our additional Military expenditure. But this was a temporary measure to meet an equally temporary need. It is now desirable to ascertain whether it would not be possible to add considerably to the margin of our resources by a careful revision of our Imperial and Provincial expenditure, as well as by the addition to our income with which the present Bill will provide us. With this view the Government of India have determined to issue a Financial Commission, so strongly constituted and furnished with such instructions, as to ensure that the task entrusted to them will be conscientiously performed, and to prove conclusively that the Viceroy and his colleagues are thoroughly in earnest in their determination to adapt the administration in all its branches to the financial exigencies of the Empire."

The Motion was put and agreed to.

The Hon'ble SIR A. COLVIN then introduced the Bill He said :—" In introducing this Bill I do not propose to occupy the attention of the Council very much longer. I have already stated in making the Motion for leave to introduce this Bill that this measure follows the lines of the existing License Tax Act as closely as the different circumstances of the case would allow. Thus, we have retained as far as possible the machinery of assessment and

appeal, so as to minimise, where we cannot wholly avoid, the chances of inquisitorial or vexatious proceedings. But of course in extending the tax to the classes included in this Bill and in doing away with a maximum rate of assessment, we have been obliged to modify the provisions of the License Tax Act. In the second Schedule of the Bill will be found the sources of income which will be liable to the tax, and which fall under four heads, each being taxed under a separate part of the Schedule. The first part includes salaries and pensions, the second, profits of joint stock companies, the third, interest from securities, and the fourth, other sources of income, that is to say, the trades and dealings now taxed under the License Tax Act, plus professions and certain other sources of income not included in the previous parts. With regard to the rate of assessment, we propose to make it a rate of five pies on the rupee or approximately 2½ per cent. upon incomes of Rs. 2,000 per annum or upwards, and four pies or approximately 2 per cent. upon incomes under Rs. 2,000 per annum. We have thought it more convenient for purposes of calculation and assessment, to take so many pies on the rupee rather than a percentage, and in so doing we have followed the precedent of 1870.

"Then, with regard to sources of income not to be subjected to assessment under this Bill. They include income derived from agriculture and from land liable to be assessed to land-revenue, or subject to local rates, the income of charities, interest upon stock-notes, the pay of military officers drawing Rs. 500 a month or less, all persons whose incomes from all sources are less than Rs. 500 per annum, and the salaries of Government officials drawing less than Rs. 100 per mensem. The sums paid under the capitation-tax in Burma and the pándhari-tax in the Central Provinces will be deducted from the amount which persons assesed to them will have to pay under this Bill. With regard to the mode and machinery of assessment, the tax upon salaries, and upon pensions and the interest upon Government securities will be deducted by the paying authority. In the case of joint stock companies, notices will be issued to be filled up with a return of income. In the case of incomes arising from other sources, a distinction is made in respect of incomes of and above, or incomes under Rs. 2,000. In the latter case, incomes are graded in six classes, ranging from Rs. 500 to Rs. 2,000, and for each class a fixed amount is prescribed. A list, as under the License Tax Act, is to be drawn up of the amount of assessment and the names of the persons liable to pay in this class, and such list will be notified in the office of the assessing officer. For incomes of Rs. 2,000 and over, notices will be served intimating to the persons assessed the amount they are liable to pay and the sources from which their income are chargeable, with certain other details which will be found in the Bill. This will be the general rule, but the Local Governments may make modifications in it with reference to special circum-

stances which they consider necessary. The machinery for the hearing of appeals and the revision of assessments is practically the same as under the existing License Tax Act.

"I do not know that I need specify further the characteristics of the other sections of the Bill. I think I have called attention to all which are in any way vital or which most require the attention of members of the Council."

The Hon'ble SIR A. COLVIN also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Monday, the 11th January, 1886

S. HARVEY JAMES,
Offg. Secy. to the Government of India,
Legislative Department.

FORT WILLIAM;
The 8th January, 1886.

Note—The meeting fixed for the 2nd January, 1886, was subsequently postponed to the 4th idem

S. G. P. ۹.—No. ۹12 L. D.—4-1-12

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Monday, the 11th January, 1886.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

The Hon'ble C. P. Ilbert, C.S.I., C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble H. J. Reynolds, C.S.I.

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

The Hon'ble Peari Mohan Mukerji.

The Hon'ble H. St.A. Goodrich.

The Hon'ble G. H. P. Evans.

The Hon'ble J. W. Quinton.

The Hon'ble R. Steel.

The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

LICENSE TAX AMENDMENT BILL, 1886.

The Hon'ble SIR A. COLVIN moved that the Bill for imposing a tax on income derived from sources other than agriculture be referred to a Select Committee consisting of the Hon'ble Messrs. Ilbert, Hope, Quinton, Hunter and Steel, the Hon'ble Rao Saheb Vishvanath Narayan Mandlik, the Hon'ble Peari Mohan Mukerji and the Mover, with instructions to submit their Report on the 22nd instant.

The Hon'ble MR. HUNTER said :—" My Lord, as I shall have an opportunity of expressing my views on the individual provisions of this Bill in the Select Committee, I shall not at its present stage detain the Council at any length. But on the introduction of the measure, your Excellency referred in weighty and eloquent words to two subjects which have always seemed to me of the highest importance, and in regard to which I entertain firm convictions. The first of these subjects is the attitude of Native public opinion to the policy of the Government. The military

precautions taken by your Lordship's Government in the early part of the year evoked an outburst of loyal support which created a deep impression in Europe, and helped to still more closely knit together British and Feudatory India. The military measures, deemed equally imperative by your Lordship's Government towards the close of the year, have been criticised by a section of the Native Press in a different spirit. The truth is that, in the former case, the Native Press was cognisant of the facts of the situation ; in the latter case it was not. Every Native journalist knows that the epoch-making invasions of India in the past have come from the north ; and every great Native family and Feudatory Chief realises that any such invasion in the present would mean the ruin of his house. With regard to the operations in Burma, on the other hand, the facts were obscure and the causes were practically unknown. The constitution and circumstances of the Government of India almost preclude it from those prompt disclosures of its grounds of action, which tend to keep public opinion in harmony with public policy in other dependencies of the British Crown. The Native Press has here to grope its way amid false rumours and ambiguous voices, stumbling over errors before it reaches the truth. Your Lordship's declaration of policy last Monday will, therefore, profoundly influence public opinion throughout India. For that declaration made it known that, quite apart from Palace massacres or Court crimes, or internal misrule in Upper Burma, and only when the future of a British province was seriously compromised, and after honest and sincere endeavours at an amicable settlement had been frustrated by the folly of the King, did your Lordship's Government resort, as the last alternative, to war.

" By the attitude of the Native community in this juncture it will hereafter be judged. A policy of wise preparation against external dangers has been laid before it. The crisis of April placed the necessity of that policy beyond doubt. Of the moderation and financial prudence with which the policy is being conducted your Lordship's speech contains convincing proofs. The circumstance that, in the anxious moments of last summer, while every preparation was successfully made, yet not a regiment was mobilised nor a penny spent except on precautionary measures, is a fact more significant to the taxpayer than any pledges or promises. Nor less significant is the fact that the Goverment has had the courage to curtail the increase to the military forces recommended by so sober-minded an adviser as the late Commander-in-Chief. In so doing the Government spared the taxpayer by tak ng a very heavy responsibility on itself.

"During seven centuries India tried the opposite policy of non-preparation, with appalling results. Again and again its peaceful populations were submerged beneath waves of foreign invasion. Those invasions came not only from Central Asia into the Punjab, but from Burma into the Provinces of Assam and Lower Bengal. It should never be forgotten that on the map of Bengal in the last century, vast districts, within 36 hours' sail of Calcutta, and now peopled by millions of prosperous cultivators, appear bare of villages, with the terrible words written across them 'Depopulated by the Maghs' or Burmese. In Northern India, during a short period of twenty-three years in the middle of the last century, six exterminating hosts from Persia and Afghanistan swept across the country, leaving a broad tract of desolation to mark their route. For the chronic state of unpreparedness which had cost India so appalling a sum of human misery, the British Government substituted a policy of preparation which from time to time imposes certain burdens. In the first quarter of this century, that policy imposed a heavy burden to meet the menaces of the greatest military Power then in Europe. In the fourth quarter of the century, it is imposing a lighter burden to protect India against possible danger from another great military European Power. And as the measures of Lord Wellesley postponed the danger from France, till it passed altogether away in the last generation, so may we, with a good confidence, look forward to similar results from your Lordship's precautions against Russia in our own day. I believe that the true issues have only to be understood by the people of India in order that they shall gratefully accept the policy of the Government, and bear without a murmur, burdens which it may impose. Most of us have watched with interest the efforts lately made by Natives of India to win their way into Parliament, and I for one sincerely regret the unfructuous result of their endeavours. But those results show that, in order to obtain the suffrages of Englishmen, you must possess not only their sympathy and goodwill, but also their more slowly granted confidence. The Natives of India have now the opportunity of giving a conspicuous proof that they cordially identify themselves with measures demanded for the safety and integrity of the Empire, and that they cheerfully accept their share of the burden which those measures involve.

"The other matter on which I should like to say a few words has reference to the form in which the burden is to be imposed. Without raising questions as to the abstract merits of direct or indirect taxation, I desire to express my conviction that an income-tax is at present, and has for some time been, the only equitable form of new taxation in India. I agree with those Native writers who

have been urging, both in the journals and in independent treaties, that an undue proportion of the revenue has, of late years, been raised from imports falling heavily on the lower classes. The Finance Minister has explained how the fiscal reforms of 1882, by drying up the chief source of increased indirect taxation, brought the country face to face with direct taxation. The most prominent of those reforms, namely, the abolition of the import-duties, has also had the effect of disturbing the adjustment of taxation between the rich and the poor. For since the Indian cotton-mills began to produce the coarser qualities of cloth on a great scale, and the duty was consequently restricted to the higher qualities, the import-tariff acted to a large extent, although not entirely, as a tax on the well-to-do classes. The peasant, who requires a stout, coarse garment which he can wash out every day when he bathes in the village-tank, profited little by the abolitions of the import-duty on the finer sorts of piece-goods. I believe that an income-tax, moderate in amount, and levied by an efficient permanent staff, is not merely the financial corollary of the abolition of the import-duties, but that it will tend to a more equitable distribution of the public burdens between the rich and poor.

"I am aware how heavily the least additional pressure must at present fall on our own countrymen in India, struggling to maintain their position here, and to educate children at home, with a depreciated rupee. The sincere and eloquent words of sympathy in your Lordship's speech last Monday have gone to many an Englishman's heart. One sometimes hears it urged that the duty on liquors is in itself a sufficient contribution from the European community. But it should be remembered that the duty on liquors, paid chiefly by Europeans, yields but a small total sum as compared with the internal excise, paid almost entirely by the Native population, and to a large extent by Natives of the poorest class. If the import-duty on liquors amounted to £422,138 in 1883-84, the internal excise yielded £3,836,961.

"The only practicable alternative to an income-tax is an increase of the salt-tax. Sir Auckland Colvin has shown that such an increase would fall most heavily on the classes least able to bear it, and he has brought forward other unanswerable arguments on the same side. From my point of view there are two considerations which have a special cogency at present. Under the new system of a moderate uniform rate of salt-duty, a gradually increasing quantity of salt is being consumed. If that increased consumption is allowed to reach its natural expansion undisturbed, a very small increase to the rate of duty will, before many years elapse, yield a very large addition to the revenue. Moreover, the extension of railways

will, before long, materially lighten the actual burden of the salt-tax on the people in the interior of India. The cost of the carriage of a ton of salt by railway is less by two annas a mile than the cost of its carriage by cart. If the salt travels 450 miles, or less than the distance from Calcutta to Benares, and much less than the distance from Bombay to Nagpur, the effect of this difference is to reduce the cost to the consumer by more than the whole duty levied by Government. I may mention that, incidentally following the reform of the salt duty in 1882, has been a freer development of an important food-producing industry. More than one hundred fish-curing yards under Government inspection have been established on the Madras coast. Last year they produced 20,000 tons, and this year their outturn is estimated at 30,000 tons of wholesome food. I am aware that the system of supplying cheap salt for fish-curing might still be followed. But any change in a reformed system so recently established, and only gradually developing its results, is to be deprecated. Apart from the undue pressure of an increase in the salt-duty on the poor, there are important considerations against any such increase at present.

"While, however, I believe that an income-tax is equitable in its character, I acknowledge that it may prove most oppressive in its incidence. The odium which has attached to the successive Indian income-taxes is chiefly due to the successive inquisitorial scrutinies required for their assessment. The tax has been laid on with a pledge that it will be taken off in a year, or two, or within a limited period, and an army of poorly paid officials has been let loose upon the country, resolved to make the most for themselves out of the temporary job. With continuity of assessment, and with moderation in assessment by means of a permanent staff, much of this oppression has ceased. It is possible to name districts in which the system of record is now so perfect as to have almost put an end to oppression altogether. I observed, therefore, with satisfaction that the present Bill was introduced without any pledge as to its temporary duration. The Bill is so drawn that it will not become inoperative by mere efflux of time. If the income-tax is to be hereafter abolished, it must therefore be abolished by a deliberate Act of the legislature, and after a public discussion of the whole facts. I sincerely hope that another period of general remission of taxation, such as that of 1882, may again come to India. But until that time arrives, I regard the continuous levy of a moderate income-tax as one of the most equitable sources of Indian revenue.

"I say this without pledging myself to all the details of the present Bill. Those details will be dealt with in the Select Committee. I must, however, at

once express my regret that no deduction is allowed from the assessable income for payments for life-insurance or deferred annuities. The English income-tax law has long recognised the expediency of encouraging thrift by making such deductions. The present extension of the license-tax to the professional and official classes, whose brains are their sole stock-in-trade, and who have no good-will of a business to leave behind them, seems to render such a deduction particularly necessary in India. The gradual disintegration of the joint Hindu family, which acted as a minute mutual assurance company or Friendly Society, points to the same conclusion. The exemption of payments for life-insurance should not, in my opinion, be left to executive rules, but should form a part of the Act. Again, it is not clear to me at present why a clerk in a Government office drawing Rs. 99 per mensem should be exempted from income-tax on his salary, while a clerk drawing the same amount in a bank or merchant's office should have to pay. The responsibilities of employers for collecting the income-tax from their servants and especially the responsiblilities imposed by the Bill on shipping agents and companies, also seem in some respects to require elucidation or modification.

"In conclusion, I desire to express my sense of the simplification which this Bill effects in the Indian law, and of its perspicacious brevity as compared with the English Income-tax Acts. I have been lately trying to understand the legal enactments under which the income-tax is levied in England. In Mr. Dowell's work on the subject published in 1874, the Income- tax Acts number fifty, and their text fills 326 pages. To these are appended extracts from eighteen other Statutes occupying another 120 pages, and requisite for a complete comprehension of the law. Instead of this voluminous compilation, and in place of the six enactments which have hitherto regulated the license-tax in India, the whole subject-matter is here embodied in one compact Bill."

The Hon'ble MR. STEEL said :—"The country will sympathize with your Lordship's Government in the mortifying necessity that, while you have so favourable an account to give of the revenue, you should be compelled to resort to fresh taxation. And, if such taxation is required for the well-being of the State, you may rely that a loyal and reasonable community will respond cheerfully to the sacrifice demanded from it. I trust it is not necessary for me to disclaim on behalf of Anglo-Indians the application to them of my hon'ble friend's sarcastic reference to 'those who are willing to transfer to others their share of misfortune.' Such will not be our attitude. We are suffering exceptionally, in a period of general prosperity,—some of us from deteriorated investments, others from depreciated exchange, and many of us from the excessive competition which renders the

struggle for existence keener and keener as years go by,—but we are all ready to bear our fair share of the burdens of the State. With regard to the necessity for great additional expenditure, I have little to say. Your Lordship's speech set forth, in stirring and weighty terms, the paramount duty which devolved upon you of strengthening and consolidating our military resources. The country distinctly recognises the need of placing India in a position where her safety is assured, not by treaties or arrangements with others, but by her own commanding strength. 'When the strong man armed keepeth his palace, his goods are in peace.' This attitude must be ours. You have described to us the means you have adopted with this end in view, and we approve of your fortresses, your frontier railways, and your additions to the army. We believe the expenditure is indispensable and are ready to pay the bill. We note with satisfaction the promise of a Commission to insure due economy of our resources, and take leave to remind you of an important economy, combined with increased efficiency, which may be attained by following the advice of the Army Commission, from whose report so much was expected.

"Having thus admitted the necessity of expenditure, I agree heartily with the hon'ble member in repudiating the cowardly suggestion that in a period of general prosperity we should provide for our present requirements by borrowing. Nothing but overwhelming necessity can jusitify such an improvident expedient. I use the same terms with regard to our reserve for famine. The policy of which that reserve was the outcome was the subject of careful and anxious thought and deliberate determination. We must pursue the path until we have attained the goal in view. When introducing this Bill the hon'ble member devoted the earlier part of his speech to a comparison of the budget-estimates of the last three years with the income actually obtained from existing sources of revenue. He demonstrated to the satisfaction of the country the elastic and expansive character of its resources, and silenced those dismal forebodings of financial ruin periodically launched from the platform and the Press. He produced evidence of the advancing prosperity of India under British rule, and satisfied the world that our consistent efforts to improve the condition of the people are achieving the results to be anticipated from them. The hon'ble member estimates that existing sources of revenue will defray the expenditure of the country with the exception of a sum of £700,000, most of which he now proposes to raise by this Bill. I will here express the opinion that his estimate of revenue is by no means too sanguine. On the contrary, I confidently expect that at the conclusion of the financial year we shall have to congratulate him on a surplus as great as the average of the past three years. This happy result I look for partly from the bounteous harvest of

which we have every prospect, and partly because I cannot agree with the gloomy view taken by my hon'ble friend and shared by your Lordship of the effect on our revenue to be anticipated from the depreciated exchange which he assumes as the basis of his caluclations. Although I feel some reluctance to enter upon this intricate and difficult subject, its importance is so great that I must support my views by argument. A change in the relative value of the precious metals, which is the cause of our fluctuating exchange, neither increases nor diminishes the material wealth of the world. The change merely involves a transfer from one hand to another. Some must gain by every fluctuation; and what some gain others must lose. If the value of silver declines, the losers are the owners and producers of the metal, and those to whom obligations are due in silver currency. The gainers are the consumers and debtors. India must belong to one of these two classes, and no argument is necessary to prove that she does belong to the latter. But, while I cannot expect that the hon'ble member will contest this general proposition, I am prepared to hear him argue that the gain to the national resources may be concurrent with the loss to the Exchequer which he foreshadows in his speech. This view will be supported by the following argument. The fall of exchange causes a direct loss on the payment of home charges in gold. At the same time, if we do not increase our land-revenue with each depreciation of our currency the advantage all goes to the landholders, and if we do not increase our salt-tax the gain goes to the consumer and not to the Government. All this is true, but I reply that other important elements of the question are left out of consideration. When the purchasing power of silver declines, we obtain a higher price for Bengal opium. I confidently assert that from this source alone we recoup ourselves for one-half of our loss on whome charges. There is another important item of gain. A fall in exchange, when accompained by no corresponding advance in rents or in cost of transport, is an immense stimulus to exports, and increases the income of Government railways. Here, my Lord, we find an explanation of our surpluses. Our budgets have brought into account all the losses which arise from falling exchange, but have failed to take credit for the compensating gains which must accompany them. Holding these views, I expect in the coming financial year a large surplus over the estimate of revenue which has been put before us. I state this, however, rather as a cause of satisfaction than complaint. I look upon it as the duty of Government to provide in prosperous times a very safe margin of income over expenditure.

"I now come to the main topic of debate. Does this Bill provide the best means of raising the additional revenue we require? The hon'ble member has

told us that he expects to have to defend his Bill against champions armed with the rusty and obsolete weapons of antiquity. If there be any such, I have not enlisted in their ranks. I have not been compelled, like my hon'ble friend, by either duty or inclination to ransack the records of past years. I can urge upon the Council nothing more venerable than contemporary public opinion, and I am happy to say that the views I will express are sanctioned by the approval of the leading representatives of commerce in this city.

"The first principle of a proper system of taxation is that it should be fair in its incidence, and the second that no unnecessary wastage should be involved in collection. Besides these it is obvious that the form of taxation should cause no unnecessary oppression or irritation, and should be framed in accordance with the wishes and even the prejudices of the people. Judged by this standard, direct taxation is less suited to this country than indirect taxation, if only we could insure that the latter could be made to fall equally upon the various sections of the community. But as it appears that no indirect form of taxation can be devised which will obtain from a certain class their proper contribution, I must express my approval of a system of mixed direct and indirect taxation. As the choice lies, therefore, between the license-tax and an income-tax, I unhesitatingly prefer the latter. The license-tax was grossly unfair in its incidence. The big fish broke through, while the small were caught in the net. This Income-tax Bill is at least intended to be fair. I believe some of its details are quite unworkable, but these may be amended in Committee; and if the Committee can secure that the means and instruments provided for carrying the Bill into effect are calculated to cause neither oppression nor needless irritation, I will be content with it. My hon'ble friend will look upon me as another Balaam if I agree with him any further; and I must now attack him on his vulnerable side.

"I must protest in the strongest terms against any budget which does not redress the crying evil of our financial system. The hon'ble member will anticipate me. I refer to the export-duty on rice. To my mind it seems inconceivable that such an objectionable impost should be preserved in any civilized country. An export-duty, on raw produce, and that produce the food of the people! With all our study of economies, can we do no better than this? It is as hurtful in practice as vicious in principle. Who would dream of an export-duty on wheat? In principle there is no difference. Let us consider its effect. An export-duty of 10 shillings per ton is equal to a percentage ranging from 5 to 10 upon its value. It absolutely shuts out the grain from important consumption for distilling and

sizing purposes. It reduces the foreign consumption of rice for food when it comes into competition with other articles of food. It thus limits the production of the principal agricultural product of Bengal and Burma at the cost of the agricultural and labouring classes. By checking the production of rice it diminishes the reserves to which we must look in case of scarcity and famine. I look upon this rice-tax as the very worst possible source of revenue which could be devised, and cannot approve any budget which does not get rid of it, even at the cost of fresh taxation. I have been informed that of the abundant harvest of 1882 much rice was actually allowed to rot upon the ground because not worth the cost of saving which but for this duty might have been profitably saved and shipped. But it is not sufficient to prove that a tax is objectionable unless I can provide a less objectionable substitute; and this condition I will endeavour to fulfil. I propose that the £600,000 required for the remission of the rice-duty be provided from other indirect taxation. Ast he import-duty on textile fabrics has been mentioned in this debate, I may as well say at once that, while this source of revenue should never have been abandoned while another more objectionable remained, still what has been done cannot be recalled. We must then look to the salt-tax, and I propose by raising this four annas per maund to obtain the sum which we should remit on rice. Now, I am well aware that to touch the salt-duty may be condemned in certain quarters, and I must therefore support my position by an examination of the incidence of the salt-tax. It has been abused by some, because it affects the working classes. Unless it affects them unfairly I look upon this as a merit. I need not protest in this assembly against the socialistic notion that the working classes should contribute nothing to the State. I propose to show that it falls so lightly upon the people as to be practically unfelt. When Major Baring reduced the tax to Rs. 2 per maund he specially reserved the probability that the tax must be raised if exchange declined. Exchange has since declined 10 per cent. The cost of salt to the consumer is about Rs. 5 per maund, and the increase I suggest is 5 per cent. on this price, leaving the consumer 5 per cent. better off than he was before. But it is necessary for the purpose of refuting objections to show how the tax really falls upon the people. The labouring classes supply themselves with salt by purchasing bi-weekly from the village-shops. Their requirements for a year are then divided over 104 portions. The incidence of the duty is four annas per head say 4½ pence sterling, per annum. The quantity purchased on each occasion is so small that it is not even weighed, but is given to the purchaser in a rough pinch or handful. Its value is so small that it is not possible to represent it by the smallest coin of the realm, but is paid for in cowries. To speak of such a tax as oppressive is a misuse of terms. It has

never been complained of by any one except exotic philanthropists, and in raising it a half-penny per head per annum, I think we should harm no one. It is my honest conviction that the peasant has never yet discovered that the tax has been reduced, and that he will neither know nor feel this small advance. The hon'ble member believes that the increased consumption of salt has been caused by the reduction of duty. I believe he is mistaken. I believe the increase is due to the increment of population, the great extension and cheapening of the means of transport, and above all to the abolition of the customs-line. I beg to assure the Council that I do not propound these views as my own. They have been pressed upon me by the Committee of the Chamber of Commerce and others of our most influential fellow-citizens. I hold in my hand a statement of the imports of Liverpool salt into Calcutta during the last ten years. The figures concerning all India are not in my possession, but this statement shows some curious facts regarding the salt consumption of Bengal. The largest increase of the decade was in 1876. There was no reduction of duty that year, but the consumption rose 13 per cent. After the reduction of 1882, the consumption rose $7\frac{3}{4}$ per cent. in 1883, and of this increase $1\frac{3}{4}$ per cent. was lost in the following year. My conclusion from all this is that we should do a service to the country in general, and the poor in particular, by taking the duty off rice and adding four annas per maund to the salt duty. I would recommend this, my Lord, from a consideration which, I hope, may influence you as a statesman and man of the world. If the salt-duty is ever to be raised ,the objections to it will gain force unless it is done on an occasion like the present, when you are imposing direct taxation.

"Before concluding, my Lord, I must address myself to another subject which appears to me to demand a change of system in our finance which would result in an important economy of the resources of the nation. The recent Government loans for public works have been raised in England, which is the cheapest market; and although this course has been made the subject of needless apology we may hope that the wasteful and extravagant system of borrowing in India will not be resumed. But unfortunately Government has expressed its intention to require that all loans for local and municipal purposes, such as the docks of Calcutta and Bombay, must be raised in India. I must protest against a system so generally condemned being applied even in this partial manner. We can borrow money in England 1 per cent. cheaper than in India, involving a saving of $\frac{1}{6}$ths of the entire charge of interest. The only possible justification for accepting such a loss must be the reasonable fear of a further extraordinary deciline in silver.

The fall represented by this difference is from 1*s.* 6*d.* to 1*s.* 2*d.* the rupee. Now although no one can tell what may be the course of the silver market, and although a further fall seems probable at present, we can pretty safely assume a limit to the possible continuous rate of decline. An adequate and detailed demonstration would fill a volume, but I think I can prove enough for my purpose in a few words. The amount of silver bullion and coin in the world is about 700 millions. The annual production is 23 millions, of which 8 millions are absorbed by arts and manufactures and the wear of coin. There remains annually 15 millions available for coinage. Assuming an extreme pessimist view, the decline in the value of the coin cannot exceed the proportion of its increase in quantity. The 715 millions of one year must be worth at least as much as the 700 millions of the year before. On this basis the continuous average decline cannot be more than 1*d.* per ounce or $\frac{3}{8}$*d.* per rupee. But while the fall cannot be more than this, there are many reasons why it cannot be so much. The specie requirements of India and China must increase; and a great fall in value must produce an effect on production. If exchange falls steadily $\frac{3}{8}$*d.* every year for ten years, it will come down from $\frac{1}{8}$ to $\frac{1}{2}$, but in the meantime we should benefit for ten years by borrowing in England to the extent of $\frac{2}{9}$ths of our interest charges. I do not pretend that this is a scientific treatment of a complex problem ,as the fluctuation in value of the precious metals is affected by appreciation of gold as well as by depreciation of silver. Having regard, however, to conditions of time and place, I put forward these observations as sufficient proof of the correctness of the general view that every loan effected in India involves an extravagant waste of our resources."

The Hon'ble MR. QUINTON said :—" I do not propose to follow my hon'ble friend who has just spoken in his criticism of the budget, in the objections he has urged to the export-duties on rice, and in his proposal to subsititute for them an increased rate of duty on salt. It appears to me that the functions of this Council when discussing a Tax Bill on an occasion like the present are similar to those of the House of Lords at home when debating a Money Bill sent up by the the House of Commons We must either accept or reject it as a whole. The members of this Council, excluding the members of the Executive Government, have neither the knowledge nor the informaition which would warrant them in forcing on schemes of their own in preference to those laid before them on the responsibility of the Governement of India. One remark of the hon'ble member I cannot however pass unnoticed. He observed that an increase to the rate of duty on salt would effect the consumer inappreciably. The controversy is not a new

one, but I am old enough to remember an enquiry made on this point in Oudh some 20 years ago, the result of which was, to the best of my recollection, that an increase to the rate then existing would unduly straiten the means of the people to supply themselves with a sufficiency of an article essential to their health and, what to an agricultural community is almost equally necessary, to the health of their cattle.

"I now pass on to the subject immediately before us. The speeches of your Lordship and Sir Auckland Colvin at the last meeting of this Council must satisfy us that, owing to causes over which the Government of India have had but slight control, the current financial resources of the State have become inadequate to the demands made upon them in order to secure the welfare and safety of British India. The continued fall in the price of silver, coupled with the increased military charges, has proved to be too great a strain on the ordinary revenue.

"I must also accept—and I for one most thoroughly acquiesce in them—the reasons which prevented the Government of India from retracing its steps and reimposing the customs-duties abolished in 1882, from increasing the rate of the salt-tax, or from borrowing to satisfy our present wants. Your Excellency has assured us that measures of economy have not been lost sight of, but that, before they can be fully considered and carried into effect, the finances must be otherwise recruited. It would be impossible without deranging the whole administration throughout the Empire to use the shears to such an extent as to fill up immediately the deficit now before us.

"These things being so, but little choice was left to the Government as to the means they should adopt to put the finances on a sound footing, and the proposals now made seem to me cautious, adeqaute and founded on unassailable principles. As stated by my hon'ble friend, the Finance Member, it has been clear for some time back to careful observers of the management of the finances that an income-tax in some shape or other was steadily approaching and we have not been startled by any sudden apparition, nor have we, as on a former occasion, had a mine sprung upon us in the shape of a demand for a doubled income-tax, in the middle of the year. The Bill on the able regulates equalises and extends an existing tax, and will take effect from the date when such measures usually come into force.

"Your Excellency and my hon'ble friend have also left nothing to be said on the fairness and decency of requiring those classes who benefit most by our rule in India to contribute to its support. The opponents of direct taxation

are eloquent on the abuses which are, they say, inseparable from such a system of taxation in India, and are eager in their desire to prove the facility with which additional taxation can be imposed on the land. Like the lawyers of Jerusalem, they would load others with burdens grievous to be borne, and they themselves touch not the burdens with one of their fingers.

"Happily the arguments from abuses, such as they were, against the former income-tax lose much of their force when directed against the Bill. The license-tax is a much narrower measure, and does not touch the agricultural and labouring classes, who already pay a fair share towards the expenses of this Government; it has been in operation for several years; the administration of it has year by year become more careful and complete; the machinery for carrying it out has been rendered more effective; the supervising agencies more skilful in detecting oppression and abuses, and the persons affected by it better acquainted with the means of securing a remedy against unfair assessments.

"Speaking for the Provinces of which I have most experience, I feel justified in saying that the tax is assessed and collected with as little pressure and abuse as it is possible to expect in levying any such impost.

"The license-tax in its present form, however, yields a sum insufficient for our needs, and is open to one great objection of principle already alluded to by my hon'ble friend who preceded me, namely, that beyond a certain point the richer a man is the smaller is the proportion of his income that it takes from him. He whose profits are counted by lakhs pay exactly the same as he whose annual income is Rs. 25,000. This anomaly the Bill will remove by regulating more fairly the contributions of the wealthy towards the support of the Government to which they owe their prosperity.

"On the other hand, by maintaining a rough classification of small incomes for the purposes of assessing the tax, the Bill removes the necessity for inquisitorial proceedings in such cases, and lessens the oppotunities for extortion and oppression by subordinate officials. The wealthy are able to take care of themselves ,where humbler men would submit to unjust and vexatious exactions.

"But, my Lord, while approving altogether of the principle of the Bill, and prepared to support the Motion that it should be referred to the Select Committee, I must express my regret that it is considered necessary, on what are no doubt strong grounds, to limit the number of classes exempted from its operation, and

thereby to curtail still further the incomes of Anglo-Indians of small or moderate means who are suffering so severely from the state of the exchange with Europe. The Native of India may, as is stated by many and by the high authority of my hon'ble friend on my right (Mr. Steel), be a gainer by the fall in the value of silver and share in the increased prosperity of the country which it is alleged has been thereby brought about ; but for the Anglo-Indian on a small income there is no such compensation. He must, if married as most are, remit to England for the members of his family whom sickness sends home from this country, or for the education of his children, a considerable proportion of his income. On that sum, be it great or small, the present depreciated value of silver involves a tax of over 30 per cent., and his income is diminished accordingly. The residue can ill bear a further deduction such as is imposed by the present Bill. Owing to the deductions from his income made by the fall of exchange on the one hand and the bill on the other, his position will be one of unmerited hardship. He will be ground down between the upper and the nether millstone ; and I hope that your Lordship in Council, though you have been unable to except the class to which I am referring from their liability to a general tax on incomes, may see fit to devise some means of mitigating the hardship they must otherwise undergo."

The Hon'ble MR. EVANS said :—" I have nothing to add to what has been said by my hon'ble friend Mr. Steel as to the attitude of Englishmen in India as regards this taxation. We have not flinched, and shall never flinch, from any burden which we see to be necessary for the maintenance of the Indian Empire. I am satisfied that the £660, 000 must be raised, and that there is no other feasible means of raising it except the one proposed by the Government, and I therefore do not object to the tax nor do I deny that it is just and equitable in principle.

"But I wish to point out to the Council that an income-tax in India is not the powerful instrument which an income-tax in England is, nor an instrument suited to the country or easily to be worked, and that we cannot trust it to meet the deficits which threaten constantly to recur from the fall of silver.

" It is almost impossible to get the traders of an Eastern country like India to make anything like a correct return of the fluctuating yearly profits of their trade. This arises from no viciousness of their nature, for they are just and honest in their dealings with each other, but from the old fixed idea, generated by centuries of oppression, that self-preservation requires that they should conceal their profits from Government and all outsiders. As it is useless to call for returns from them or to assess on the basis of such returns if sent in, the Collector

must assess at his discretion. To obtain the necessary information the Collector must employ agency untrustworthy and corrupt. This will result in much bribery and much extortion and oppression. There will be a vast difference between the amount of money which leaves the pockets of the people and the amount which finds its way into the Treasury. That the comparatively small sum of money now required can be raised by this means I do not doubt; but unless extreme discretion and tact be exercised in the working of this tax, it will create a maximum of irritation with a minimum of results. The great difficulty of introducing and working such a tax as this in an Eastern country, the great danger of oppression by agents open to bribes, is so evidently present to the minds of the Finance Minister and your Excellency, that I need not enlarge upon them. I will only say that this tax is a reed which it will be dangerous and unsafe to lean too heavily on.

"I am not unmindful that the license-tax has been in existence for some time, but I doubt if its working can be called satisfactory in Bengal; but the existence of the license-tax does no doubt render easier the introduction of this more extended system; and it may be that if this tax is worked in the direction of leniency and without too many changes of assessment,—for change and unrest is of all things most abhorrent to the Eastern mind,—the people will settle down under it. But to attempt to make it yield its fullest results will be disastrous, and this tax will, I fear, never occupy the same place in our system as its namesake does in England.

"Possibly something may be done in future to make the death or succession duties more profitable by depriving those who do not take out letters of administration to the whole estate of the benefits of the legal machinery of our Courts. But this subject is beset with difficulties, and offers no escape from our immediate difficulties.

"I do not share my hon'ble friend Mr. Steel's view that the depreciation of silver is a benefit, but I see that it threatens us with a yearly widening chasm of deficit, and I think we can feel no security as to our finances in face of the insuperable difficulties in the way of fresh taxation until we hear that the English Government has abandoned its policy of doing nothing, and is taking active steps to meet the danger by international agreement.

"I agree with my hon'ble friend Mr. Steel that the export-duty on rice is indefensible and wrong, and ought to be got rid of. So bad a tax is it, that probably the raising of the salt-tax is not too great a price to pay for its abolition, though on principle that tax ought only to be raised to meet emergencies."

The Hon'ble MR. GOODRICH said :—" The hon'ble member who spoke first expressed his sense of the desirability of exempting amounts paid on policies of insurance or deferred annuities from the amount of assessable incomes. That induces me to say that insurance companies and friendly societies are not sufficiently under control in this country to enable the Government to make such an exemption general, and the proposal of my hon'ble friend presents some difficulties in that way. Therefore, if any such exemption is made, I think that such exemptions should only be made in connexion with well established societies or Government saivings banks, or some arrangements under the Post Office. I have nothing to say on the general principle of the Bill, but I assent to the Motion now before the Council."

The Hon'ble PEARI MOHAN MUKERJI said :—" It is now three years, if not more, since the wholesome practice of submitting the annual Financial Statement to this Hon'ble Council was discontinued in favour of the publication in the official Gazette of statements showing the actual receipts and disbursements of the year, and estimates for the coming year, in the shape of a Government Resolution. Although this altered procedure has its advantages, and is likely to be adhered to in the present year and in future, I think it is very desirable, for many reasons, that there should be harmony between the rulers and the ruled in the determination of important questions relating to finance and taxation ; and I think that the Government cannot but strengthen their hands by taking the public into confidence in such matters. I feel therefore deeply grateful to your Excellency and the Hon'ble the Financial Member for having, in introducing the present Bill, taken the opportunity to explain not only the present financial situation of the Government but also those political considerations which led your Excellency's Government to engage in a war with the late King of Upper Burma at a cost of £270,000, and to embark in expensive military works and preparations for the defence of our north-western frontier. The cost of these military preparations is estimated at no less than two millions, and there is a furfurther charge of nearly a million which has to be met next year owing to the apprehended fall of a penny in the value of silver. While, however, the Hon'ble the Financial Member expects to meet the increased charge on account of exchange from the additional revenues from the export trade, railway receipts, opium and customs, and to provide £1,300,000 for military preparations from the existing resources of the Empire, there remains a deficit of £700,000 which your Excellency's Government have to confront. Considering that no large measures of economy in the administration of a vast empire can be matured and carried with a

view to immediate effect, and that, by reason of the currency of Provincial contracts, only a narrow margin for retrenchment of expenditure is left to the Government of India, it would be idle to suggest that this deficit in the estimates for the coming year should be met by a reduction of expenditure. Nor do I think that Government should have recourse to a revision of either the salt-duty or the import-duties in this emergency. I am free to confess that the Hon'ble the Finance Member has failed to satisfy me that the high duty levied on salt before 1882 placed an insufficient supply of the article within the means of the people. I venture to think that the reduction in the rate of duty has made no appreciable difference in the measure of consumption of the article by individuals, and that we must look to improved means of communication and to an ever-increasing population of the country for an explanation of the large increase in the aggregate consumption of salt. But it appears to me, in spite of what the Hon'ble Mr. Steel has said, that no addition, however small, should be made by indirect taxation to the cost of living of a poor man who earns barely enough to make the two ends meet, while his rich neighbours bear much less than their fair share of the burden of taxation. In making therefore the observation that 'it is obvious that any honourable man who had to choose between taxing the most indigent classes, who already contribute a considerable share of the public burdens, and taxing those classes who, though in easier circumstances, scarcely contribute anything, it is to the latter alternative that he would resort.' your Excellency enunciated one of the soundest doctrines not only of fiscal administration but of morality and justice. I feel therefore no hesitation in saying that the principle of the present Bill is just and sound, and I trust that those who will be disposed to view it by the light of adverse criticisms will bear in mind that it involves a measure of taxation which the Government feel the greatest reluctance to impose; that it is the outcome not of financial mismanagement but of a policy forced upon the Government by certain external events over which they had no control; and that it is a measure which is intended 'to maintain unendangered,' to borrow your Lordship's expressive language, 'the honour of the Queen-Empress and the safety and security of the Indian Empire and of the millions of hearths and homes it contains.' But while declaring with no uncertain voice that the present measure is necessary to meet the exigencies of the Empire, and that it is just and equitable in principle, I feel bound to entreat this Hon'ble Council not to look upon it as a perfect measure. The distinction it makes between public servants and servants of private firms and individuals, the liability it attaches to joint Hindu families, the provision it makes for the assessment of occupying owners of lands and houses which already bear a heavy burden of municipal tax or public cesses, and the opening it leaves

for inquisitorial proceedings, are defects in it which I hope the Select Committee will be empowered to remove.

"A far graver question connected with the measure is the question of its duration. The Hon'ble the Financial Member has told us that there is but one year to be tided over; and we know that, excepting in cases of extraordinary demands for increased expenditure, our revenues are enough to maintain at least an equipoise between incme and expenditure. The Hon'ble the Financial Member has expressed an apprehension that we know nothing of what increased expenditure may be in store for us, in respect, for example, of Burma. I find, however, from the Administration Report, that British Burma, after defraying her own expenses, has paid to the Indian Exchequer an aggregate surplus of £8,414,102 in the last eight years, or a sum of more than one million a year. But, even supposing that the cost of administration of Upper Burma will introduce a complete change in the financial position of that country, that the men we call dakaits are really men fighting for their country, and that there is prospect of an infinity of troubles in the Chinese frontier, we rely on your Excellency's wisdom to consider whether in the true interests of the Indian taxpayer that remote country should not be separated from your Excellency's Government and made into a Crown colony. At any rate, I venture to express a hope that, as the increased expenditure which has made the present measure of taxation necessary is of a temporary character, as the Provincial arrangements now in force will expire at the end of the ensuing year, as matters in Burma are still unsettled, and as your Excellency contemplates appointing a Financial Commission to make a careful revision of our Imperial and Provincial expenditure, your Excellency will be pleased to put off the enactment of any permanent financial measure till the next year. With all its merits, the present measure will leave the incidence of direct taxation in a state of great inequality. The poorest cultivators of the soil will pay a cess of more than 3 per cent. on his profits, while a certain class of persons in the enjoyment of an income of more than Rs. 1,000 a year will pay no direct tax whatever to the Imperial Exchequer. It is, besides, a question worthy of further consideration whether one of the permanent sources of our revenue should be an income-tax, which such a high authority as Sir Charles Trevelyan described as 'a potent but imperfect fiscal machine' that 'should be regarded as the great financial reserve of the country,' and which, Mr. Massey said, should never be resorted to except under emergent circumstances.

"The considderation of the Famine insurance scheme was appropriately introduced by your Lordship and the Hon'ble the Financial Member in connection

with the present measure; but even at the risk of being reckoned one of 'the herd of such who think too little and who talk too much,' I must say that those who contend for the existence of a separate Famine Insurance Fund are far from being guilty of a 'wilful error.' Sir John Strachey expressly assured the public in 1877 that the proceeds of the new taxes then imposed 'will be expended for the purpose of providing what I have called an insurance against famine, and for no other purpose whatever.' Lord Lytton accentuated that assurance by saying 'we have pledged ourselves not to spend one rupee of the special resources thus created upon works of a different character'; and Her Majesty's Secretary of State for India, in laying the last Indian Budget before Parliament, is reported to have said: 'This year Sir A. Colvin proposed in his Budget to allot for the purposes of the Famine Insurance Relief Fund £33,000 under the head of direct famine relief; He proposed to take £287,000 from the Famine Insurance Fund for protective irrigation-works'; and, after some further remarks, his Lordship concluded by observing that it is perhaps more honest and straightforward to say that to all intents and purposes the famine insurance has been swallowed up by the peculiar demands of the year.' But, after what the Hon'ble the Financial Member has said, the contention about this matter has reduced itself to a contention about words. We have been told that since 1st April, 1878, a sum much larger than £,1,500,000 per annum, the amount originally contemplated, has been spent for the purposes for which the fund was designed, an authoritative statement which should silence all complaint on this head, and convince the public that no pledge has been broken, and no trust betrayed, in connection with the Famine Insurance scheme."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said:—

"MY LORD,—Having listened to what has been said before, I must confess that my work has become somewhat complicated, but what I propose to do is to vote for the Motion to send the Bill to the Select Committee, and to submit a few observations to the Council on some of the points touched on in the observations which your Lordship addressed to the Council last Monday, as well as what fell from the Hon'ble the Financial Member. But before I do so I must say I agree with what fell from the Hon'ble Mr. Quinton in reference to our position as regards this Bill. We have no Financial Statement technically before us, but the present Bill gives us the same opportunity for discussion as we should have had if both the Bill and the Statement had come together; I see the Hon'ble Mr. Steel has introduced the question of export-duties; I must ask the hon'ble members to remember that that matter is not by any means so simple. I think

that the subject of imports and the subjects of exports are to a considerable extent relative questions. Sir Charles Trevelyan, in an address on Indian finance, delivered in 1870, in London before the East India Association, said as follows :—

'Although Her Majesty's Government objected in 1865 to an export-duty of 3 per cent. being levied on Indian coffee for the benefit of the Indian exchequer, a duty of 45 per cent. is levied on this same coffee in England for the benefit of the English exchequer. This is neither just nor generous. The duty should at least be halved between the two exchequers, and the more so because great part of the coffee exported from India is sent direct to France and other foreign countries, and the Indian Treasury therefore misses any benefit from it. The same considerations apply to the tea exported from Northern India.'

"Sir Charles had recently consulted the great economist Mr. McCulloch on this question, and his letter in support of the above views was read to the meeting.

"I proceed now with the subject in hand. Having listened to the clear exposition of Sir A. Colvin, I take the immediate question before us to be—How are Rs. 70,00,000 (or £700,000 approximately speaking) to be raised ? He proposes to do this by means of an Act which is a combination of a license-tax (on incomes up to Rs. 2,000) and an income-tax on those exceeding Rs. 2,000, the incomes in both cases being non-agricultural. I compliment the Financial Member on the distinct advance that has been made on this occasion by the entire exclusion of landed incomes. I will not follow him to those classic regions of financial perils to which he has felicitously alluded, and from which he has happily emerged. But there is, I see, an idea abroad, almost haunting a portion of the public, that the landed classes in India, who now contribute more than £21,876,047 to the Imperial revenues, are still proper subjects of further taxation. To these persons I may (somewhat in the words of Mr. Chapman), address the following observations made in this Hall in 1871. In the Presidency of Bombay 'a succession of new taxes had been imposed during the past ten or twelve years. In addition to the income-tax, we had had a cess of six and a quarter per cent. on all revenue; a quit-rent of considerable amount on lands previously held rent-free; tolls and municipal taxes had been freely resorted to; salt-excise had been greatly increased; and last, but not least, in many parts, the thirty years' settlements were falling in, and revised rates, involving an increase of some sixty per cent. on the land-revenue, were being imposed. The local Fund receipts during the year 1869-70 amounted to £618,000; while the municipal taxes realised £530,000. Allowing for a portion of the Local Funds being derived from jail-manufactures,

harbour-fees, Native States, charitable endowments, and other sources that did not press directly on the country, he believed it would be found that the Presidency [of Bombay] contributed not far short of a million sterling over and above the Imperial revenue.' I have not been able during the short time at my disposal to make out the figures for the last year; but the amount cannot be less. For all local improvement hitherto has meant increased taxation; and some improvements have been of a very doubtful kind. All these considerations lead me to the conclusion that the present step of the exclusion of incomes derived from sources other than agriculture is a decided advance in the right direction. There is yet one more consideration which also tends in the same direction, and that is, the non-resort to increased salt-tax, Hon'ble members who speak in favour of this tax ought to remember what was said in 1870 in this Council about this tax. Besides in Western India—I speak of the Bombay Presidency—there was at one time (*i.e.*, prior to 1837,) no salt-excise at all. Afterwards eight annas a maund were imposed; then one rupee; one rupee thirteen annas three pies; two rupees and three rupees. In 1882, it was reduced to two. It would be tedious to go through first principles on this occasion, except as a matter of sheer necessity; but I take leave to say that salt like grain ought to be practically free; or if that cannot be, that it ought at least to be taxed as lightly as possible. I cannot understand how any body at Madras can have gone up to Government with a proposal to raise the salt-tax, which presses so hard on the masses that the poor have in very many cases been found living by scraping saltish earth, and in some cases have been actually prosecuted for so doing. I refer to the debates of 1865 and other publications in support of my arguments; and on their evidence and on my own experience of over 30 years, I hold that the present resolve of Government not to raise the salt-tax is a correct and wise step in Indian finance.

"I have now, my Lord, to turn to import-duties—a third item of taxation not in the budget, but which, in my humble opinion, should have been there. In so saying, I do not propose to raise any question on this occasion in reference to the Bill now before us. But the subject is very important, and as such, it is one deserving of the earnest consideration of the Government of India. Sir A. Colvin says that 'the exemption from duty, in March 1878, by the Government of Lord Lytton, of certain descriptions of grey cotton goods made the abolition of the import-duties on all cotton goods a question only of time.'

"It is not my object to unearth on this occasion the voluminous literature on this subject; but there is the evidence of a few facts and figures which it would

be to the benefit of British India always to remember. In 1875, when the Indian Tariff Bill was being discussed in this Council, the Hon'ble Mr. Hope, after discussing the whole question, shewed that 'the case for total abolition on the grounqs on which it was claimed must inevitably fall to the ground.' He also said that Mr. Massey had remarked with truth that the Indian import-duties were the lightest in the world. Not only was this statement then made, but Mr. Hope spoke of an excise-duty which might thereafter be resorted to, and he warned the 'investors in Indian mills that they should bear this hint in mind; and thus forewarned, be precluded from charging the Government with breach of faith to them in the event of the imposition of an excise-duty at any future date.' His Excellency Lord Northbrook, in summing up on that occasion, explained that the Indian customs-duties had never been regarded as protective; and after naming all the Finance Members from 1860 and downwards, said that 'in all financial questions the true interest of the people of India is the only consideration which the Government of India has to regard.' Such was the state of matters in 1875. What happened in 1878 is a matter of history, which will be found in a Parliamentary Return of 14th August, 1879. I do not propose to enter into the Budgets of 1882, which is the next point of departure from the Indian Tariff Act of 1875.

"I know the Resolutions of the House of Commons quoted in 1878 and afterwards; but the House of Commons, like the Government of India, will only ultimately decide the financial policy for India by all the considerations which are *just* alike to all interests; and now that the duties have been abolished the duestion to consider is—Have they had the tendency which has been attributed to them? In addition to the remarks of the Tariff Committee, I beg to refer this Council to an excellent letter addressed to Lord Lytton in 1877 by Mr. Sorabji Shapurji Bengali, then a Member of the Legislative Council of His Excellency the Governor of Bombay, and one of our most experienced and enlightened merchants on the other side of India. He is a thorough free-trader, and the facts which he advances are therefore all the more valuable. This is what he says about our cotton-mill industry, as viewed in relation to the Indian tariff:—

'I am strongly of opinion that the best interests of the country require that this new industry or any other industry should thrive or fall on its own merits. I believe that it would be disadvantageous for India if the policy of its Government were directed to support industrial and commercial enterprises and encourage the employment of capital in them by means of protective tariffs, a policy which increases the cost of the articles thus protected to the general consumer and therefore taxes the resources of the country for the benefit of the capi-

talist during the time the protection is permitted to last, and which results in the loss of capital and the creation of distress when the protection is removed. If it can be proved to be a fact that all or even a moderately large proportion of the thousand and one varieties of articles at present imported into India, and included in the comprehensive name—"Cotton-goods," can also be produced in India for commercial purposes, that is to say, as cheaply as if manufactured in Lancashire, by means of European machinery, then the interests of this country require the immediate abolition of our import-duties on cotton goods; for, otherwise, the Indian mill-owner could add to this legitimate profit nearly the full amount of the import-duty and still under-sell his English rival, so that the native buyer of cotton-goods would pay the native manufacturer nearly 5 per cent., on the price of his bargain for nothing. Such, however, is not the fact. The cotton-goods which India imports (with the exception of an insignificant fraction) are not of the same kind which her cotton-mills can produce. Nor, years ago, even when there were no cotton-mills established in this country, did India obtain her supply of coarse cotton manufactures, such as these mills produce, to a larger extent than 10 per cent. of the total imports of cotton-goods from foreign countries. Her industry in the finer varieties of cotton-goods has given way to cheaper importations from outside; but in the preparation of coarse goods for the great mass of her people, India possesses natural advantages in the home-produced, home-spun cotton, which enable her to defy the world. The introduction of cotton spinning and weaving into the country by means of machinery is really then for the most part nothing more than the introduction of competition between machinery and the indigenous hand-spindle or the hand-loom, and also of competition between India on the one hand and Europe and America on the other in the supply of cheap coarse cotton-goods to several Asiatic countries and parts of Africa. The cry, therefore, that since the establishment of factories in India for cotton-manufactures, the retention of the customs import-duties acts as a protective impost, rests on no better foundation, so far at least as nine-tenths of these duties are concerned than a desire to obtain the admission of cotton-goods of every variety into this country free of duty whether protective or non-protective.'

"The same is the conclusion to which the Tariff Committee of the Government of India had come. As to the actual use of these articles by the different classes of the people, Mr. Sorabjee says as follows :—

"'Moreover, foreign cotton-goods imported into India partake of the additional recommendation of having in them something of the nature of articles of luxury. We import annually, in round figures, about 19 crores (say, nineteen millions sterling) worth of foreign cotton-goods. The uninformed may be under the impression that by far the largest portion of this amount represents goods required by the mass of the Indian people for their every-day use. But this is not the case. Of these 19 crores worth of imports of cotton-manufactures of all kinds, 3 crores consist of bleached goods, 3 crores of colored, dyed and printed goods, 2½ crores of yarns of all varieties, technically known as No. 40s., and upwards, suited for native looms in the preparation of fine cloths, 3 crores of superior descriptions of grey piece-goods

and 7½ crores of other grey cloths. The first four out of these five items give a sum total of 11½ crores of rupees, and any one acquainted with the trade and with the habits of the people will be able to inform your Lordship that the goods represented by this sum, with the addition of about one-half the quantity included in the last and remaining item, after undergoing the process of dyeing or printing in the country, are consumed by the higher and the middle classes of people for their daily requirements, and by the poorer classes as articles of occasional use not subject to every-day wear and tear. For their every-day use the mass of the people use very little of foreign manufactured goods. The product of native hand-looms from the cotton of the country has hitherto supplied the wants of the bulk of the population as regards cheap clothing. The competition of the cotton-mills of India is more with the indigenous hand-loom than with Manchester, which, owing to want of cheapness, has always been unable, beyond an insignificant portion of its exports, to make a way for its coarse cloths into India.'

"Thus it is quite clear that the imports affect only the well-to-do classes, nearly all the cloth imported being used by them and not by the very poor. As regards the protective character of the duties, the question is further cleared by looking at our imports.

"What do we now find to be the actual evidence of exports and imports of these cotton-goods? The table below will show this :—

Imports and Exports value of Merchandise and of English Piece-goods from 1866-67 *to* 1885-86.

Years.	Value of Imports (exclusive of Government Stores and of Treasure.)		Years.	Value of Exports (exclusive of Treasure and Government Stores).	
	Total value of imports.	English Piece-goods imported (cotton).		Total exports (Indian produce).	Piece-goods Indian (cotton).
	R	R		R	R
1866-67 (11 months)	29,01,47,413	12,52,41,060	1866-67 (11 months)	40,77,39,592	59,51,059
1867-68	35,66,43,206	14,99,99,174	1867-68	49,59,66,646	67,20,168
1868-69	35,93,13,740	16,07,25,505	1868-69	51,67,62,321	57,25,792
1869-70	32,87,96,432	13,55,58,462	1869-70	50,67,95,443	23,85,260
1870-71	33,34,82,462	15,64,48,675	1870-71	53,55,16,812	25,42,369
1871-72	30,81,07,756	15,00,99,805	1871-72	61,69,72,262	27,21,590
1872-73	30,47,30,694	14,54,57,722	1872-73	53,44,91,833	30,50,033
1873-74	31,62,84,972	15,10,48,968	1873-74	53,11,44,275	38,49,371
1874-75	34,64,52,622	16,21,77,602	1874-75	54,50,10,909	35,38,217
1875-76	37,11,26,672	16,25,94,615	1875-76	56,21,22,438	39,19,860
1876-77	35,36,71,766	15,82,94,045	1876-77	58,93,00,693	43,37,477
1877-78	39,32,60,030	17,10,27,751	1877-78	63,14,35,332	44,22,857
1878-79	36,56,61,947	13,93,75,110	1878-79	58,70,79,285	47,93,389
1879-80	39,74,21,662	16,72,33,522	1879-80	64,95,08,331	48,68,994
1880-81	50,30,88,343	22,63,86,416	1880-81	71,97,40,678	58,50,443
1881-82	46,99,20,842	20,57,07,239	1881-82	79,25,52,431	59,98,600
1882-83	50,00,30,405	21,18,17,652	1882-83	80,59,81,554	72,93,868
1883-84	52,70,38,912	21,39,69,074	1883-84	85,08,57,205	89,56,600
1884-85	53,14,93,110	20,90,80,516	1884-85	80,31,32,079	86,92,894
1885-86 (eight months)	33,24,01,787	13,11,73,364	1885-86 (eight months)	48,66,22,450	57,21,188

"Further, I beg to append a statement * in regard to piece-goods alone and yarn for 1880 to 1884, made out for me last week by a leading merchant in

**Statement of Imports of Piece-goods (grey, bleached, colored and printed) and of yarns (grey and dyed) into Bombay, Calcutta and Madras from the year 1880 to 1884, both inclusive.*

PIECE GOODS.	1880.	1881.	1882.	1883.	1884.
Calcutta.					
Grey	705,200,000	701,200,000	653,000,000	615,300,000	667,000,000
Bleached	150,000,000	155,100,000	117,000,000	161,400,000	129,000,000
Colored	80,400,000	62,300,000	78,000,000	61,800,000	70,500,000
Printed	75,200,000	38,800,000	35,500,000	41,800,000	31,800,000
TOTAL	1,010,800,000	957,400,000	883,500,000	880,300,000	898,300,000
Bombay.					
Grey	323,000,000	330,700,000	300,000,000	290,000,000	307,500,000
Bleached	99,500,000	120,200,000	83,200,000	138,500,000	103,600,000
Colored	49,000,000	41,900,000	47,200,000	52,600,000	67,500,000
Printed	61,500,000	52,300,000	70,100,000	90,200,000	90,000,000
TOTAL	533,000,000	545,100,000	500,500,000	571,300,000	568,600,000
Madras.					
Grey	40,000,000	47,400,000	59,400,000	58,700,000	67,400,000
Bleached	8,100,000	13,300,000	15,500,000	23,700,000	16,200,000
Colored	9,600,000	10,200,000	11,200,000	11,300,000	20,900,000
Printed	11,200,000	11,400,000	20,200,000	14,000,000	16,400,000
TOTAL	68,900,000	82,300,000	106,300,000	107,700,000	120,900,000
GRAND TOTAL	1,612,700,000	1,584,800,000	1,490,300,000	1,559,300,000	1,587,800,000
YARNS.					
Calcutta.					
Grey	8,600,000	8,047,000	9,450,000	8,310,000	8,570,000
Dyed	8,000,000	5,553,000	5,330,000	5,450,000	6,740,000
TOTAL	16,600,000	13,600,000	14,780,000	13,760,000	15,310,000
Bombay.					
Grey	7,700,000	8,500,000	7,743,000	10,000,000	8,000,000
Dyed	5,350,000	3,822,000	4,275,000	6,100,000	6,300,000
TOTAL	13,050,000	12,322,000	12,018,000	16,100,000	14,300,000
Madras.					
Grey	8,000,000	8,300,000	10,600,000	7,200,000	9,700,000
Dyed	4,100,000	2,800,000	2,374,000	3,800,000	3,300,000
TOTAL	12,100,000	11,100,000	12,974,000	11,000,000	13,000,000
GRAND TOTAL	41,750,000	37,022,000	39,772,000	40,960,000	42,610,000

Bombay, from which it appears that the annual rate of increase in the import trade of piece-goods and yarns into Bombay, Calcutta and Madras continued uninterruptedly until the year 1880. For in the year 1873, the entire import for the three Presidencies was 1,071,685,753 yards of goods and 28,778,179 lbs. of yarn, while in the year 1880 it was 1,612,700,000 yards of goods and 41,750, 000 lbs. of yarn, thus shewing that from 1849 to 1880, there has been a continued increase in the imports. It was from March, 1882, that the import-duties upon goods and yarns was altogether removed, and instead of the imports increasing, as we may naturally expect if the protection theory were correct, they have remained stationary except in the case of Madras, where a slight increase is perceptible ; but taking the total of all the three Presidencies for each year the imports fall short of what they were in 1880 ; and that, too, in spite of the enormous increase in railway communication throughout India and the large increase in its population. Besides, it will be observed that the rates ruling for picee-goods and yarns in 1880 were higher than they were in 1884, shewing thereby that the consumption of foreign goods in India did not increase by removal of the duty. It ought, at the same time, to be noticed that the consumption of local spinnings and manufactures did not also increase during the same period, and were it not for the unexpected and large offtake of the local mills' yarn for China, the serious losses suffered by the local mills, with rare exceptions, during the last five years, would have made the position of mill-industry very unsound. It thus follows that the removal of duty has only deprived India of a legitimate source of revenue, while it has not secured the objects for which the scacrifice was apparently made.

" The true end of all taxation, whether direct or indirect, is, I take it, purely fiscal, and duty should be imposed for revenue-purposes only. Articles of luxury are taxed in all civilized countries for revenue-purposes, while all other articles save raw materials are lightly taxed. The import-duty on piece-goods, if levied to meet the present wants, would not amount to even half an anna a head. Thus the average annual imports of merchandise into India for the last three years ending March, 1885, average about 53 crores rupees, and if a duty of 1¼ per cent. only was levied on this import, it would yield 66 lakhs of rupees to Government, which would be at a rate under half an anna per head on the present population of 25 crores, if it fell on the masses ; but I submit this does not ; it is chiefly paid, as Mr. Sorabjee Bengali has shown, by the higher classes. Besides ,this is a tax which will reach the population of Native States, who receive the benefits of the British rule as we do without contributing anything towards its expenses. This

item of indirect taxation is a better way of raising revenue for Imperial purposes than direct taxation like the income-tax, which, in India particularly, is obnoxious to the people. A protective duty is indeed injurious to free trade, but from the statements of imports it will be apparent that the import-duty in India was not protective before, and cannot even now subserve such a purpose for many obvious reasons. It was levied to enable the Government to carry on the machinery of the administration. It was paid without demur and at the least possible expense in collection as compared with any other mode of taxation. If England, which lays down broad principles of free trade and insists upon their being observed by India, imposes exorbitant duties on foreign goods for revenue-purposes whenever necessary, why should not India, under similar circumstances, be permitted to do the same, and particularly when the tax is merely a nominal one, and yet affords a good help to the revenue; and when, as Mr. Sorabjee Bengali has distinctly proved, it does not touch the poor, and chiefly falls on the well-to-do classes?

"In the face of these facts I am sorry this tax was not availed of as recommended by the Madras Chamber of Commerce; and I cannot understand the recommendation to extend the operation of the license-tax in the form of an income-tax. If it were a mere license-tax it would be open to the same objections as the existing tax; but this is something more. It is an income-tax in the case of all whose incomes are above Rs. 2,000. The history of this tax has been so often repeated in this Council that I will not now enter into it. All I have to say is that it is still open to the remarks which have been submitted in this Council by Messrs. Inglis, Robinson, Cockrell and others on the evidence before them; and I can only hope that such a tax will only be resorted to on occasions of the greatest urgency and necessity. The difficulties of working such a tax (as I might safely say also from my own little experience in working it) are very great; and I shall only add my humble voice to those that have gone before me in imploring the Government not to insert it hereafter in their Budget as an ordinary source of revenue. It presses hard on the honest, and its effects are demoralizing.

"There is one more subject on which I have to say a few words before I conclude.

"Your Lordship made an appeal to the individual members of this Council, which (speaking for myself) was hardly necessary under the circumstances in which it was made. When the subject of a pure license-tax was discussed in

1878 in Bombay, I voted against it on the ground of its one-sidedness. That feature is absent on this occasion; but the symmetry of the Act is marred by the higher classes being put under an income-tax instead of a license-tax.

"I think, however, we shall all rejoice at the removal of all grounds for imposing such a tax, which I expect from the searching inquiry into expenditure which your Lordship's Government have now resolved upon. I have not been able, within the short time at my disposal, to lay my hands upon all the details which would be necessary to speak authoritatively on this question in detail; but there are several departments in which very large saving has long been overdue. In my own Presidency, the Revenue Survey Department had or ought to have finished its work long ago, and yet from the returns it appears that that department is still of the same strength financially as it was ten years ago. When I remember what Mountstuart Elphinstone said of this department in 1820, I am grieved to see the unnecessary extension of its life and action in those districts where its work has been once completed. The new Forest Department is a young department in its origin; but it has now been working almost like the old Inam Commission. I see a Commission appointed to inquire into it in Bombay; but looking to the evidence that is being taken, it has scarcely touched the surface. Whether it will go beneath, and help to secure an efficient administration without any unnecessary annoyance to the people, remains to be seen. Again, on the basis, or rather the remains, of our Survey Department threatens to come in the Agricultural Department, the total expenditure of which has risen from Rs. 2,45,480 in 1870-71 to Rs. 8,05,718 in 1884-85; and when I closely look into the items constituting this expenditure, and as a landholder and a practical agriculturist, cast my eyes at our agriculture, I must confess that I view upon the outlay on this department as utterly disproportionate to the results expected to be achieved. For better or worse, India is not a country for large farms and the employment of expensive machinery. As a cultivator of land, I always seek and utilize such information as I can get; but I cannot view with favour such expenditure as is now increasing day by day in this department. Other small but proportionately costly departments will also be required to be pruned down. Above all, there is one great department about which succesive Finance Ministers (including the present) have complained year after year, and without a better regulation of which all other reforms, as it seems to me, will be comparateively valueless, and upon which the Government must begin to work; and that is the Military Department and its expenditure, without affecting the efficiency of our military forces. The question of the Staff Corps organized in 1861, and the

lakhs of rupees it annually adds to our liabilities, was first publicly mooted, if I remember rightly, by Sir Charles Trevelyan in 1870 in London. Sir Charles said that promotion was given to officers in the Staff Corps according to mere length of service without reference to any fixed establishment. What was the result? Here are his words :—

'The consequence of this is that the qualification for the highest rank and the highest rate of pension is simply absolute length of service, without regard either to the public wants or to the relative claims of other officers; and everybody is certain to arrive at the highest rank, and to be entitled to the highest rate of pension, if he holds on during the prescribed term of years. The tune is, "we are all growing old together," There will soon be an army of field officers with very few subalterns, and such a retiring list, all at the highest rate of pension, as the world has never seen.

'This, of course, is no mere opinion of mine. In the discussion on the income-tax in the Council of the Governor General in April last, Sir Wlliam Mansfield, the Commander-in-Chief said, "There is one more point to which I would invite the attention of the Council, that being the growth of non-effective establishments. I need not advert to the statement of General Hannyngton and Colonel Broome beyond uttering the remark that, while those distinguished authorities differ in detail, they are agreed in presenting a picture of future liability which is positively alarming. In short, we are threatened with the serious danger of all our economies in India in the combative force being eventually greatly *more than swallowed up* in the growth of the non-effective expenditure. Under such circumstances a further greater danger might be forced on by public outcry, involving perilous reductions, to meet non-effective charges." These statements will be found in the Parliamentary paper "East India Staff Corps, No. 140, of 1869."

'The Controller General of Military Expenditure sums up as follows :—"Military history presents no instance of an army so constituted, or of one so costly But unsatisfactory as is the present financial condition of the Indian army, the future prospeect is far worse."

"This was said before 1871, only ten years after the formation of the Indian Staff Corps. In 1878-79, it appears there were 1,961 officers in the three Staff Corps, while there were only 245 army appointments which could be held by officers below the rank of Colonel.

"Sir A. Colvin himself has complained of certain army expenditure; and we do not yet know what practical benefits we may expect from the Commission which sat at Simla in 1879. Successive Finance Ministers have dwelt upon the heavy expenses in connection with the British army in India. Now that we have got railways all over the country, and the whole Continent is enjoying profound peace, Her Majesty's Government ought to help the Government of

India in a material way in reducing this expenditure, and if that is done, with the natural increase of our revenues, the Government of India will be able not only to pay its way, but will have no occasion to resort to such unusual taxation.

"As regards the Bill itself, there are a few questions which will require serouis consideration.

"First in regard to taxing house-property. In cities such as Bombay, Calcutta, and the like, and in large municipal towns where houses are valued for municipal purposes, I see no difficulty; but to introduce taxation of house-property into the Mufassal generally, into villages whether large or small, is a step full of peril and difficulty. There are no standards for valuation there. In thousands of places, there is hardly any letting value; and in such cases I see all the dangers of inquisitorial proceedings and arbitrary assessments, and consequent annoyance, which has been so correctly and graphically described in this Council more than once, and to which I fully subscribe. I hope and trust therefore that such assessments may be limited to towns and cities as I have suggested.

"Another question is the taxation of the Government securities. I beg that the propriety of this may be reconsidered, as it is a matter which affects public credit.

"Yet another question remains; and it is the question of secrecy in regard to income-tax assessments. This is not provided for in this Bill, although it used to be so in the former Acts. All officers, so far as I know, were sworn to secrecy under the law; and so I think they should be. This is a matter on which the Native mercantile community has always laid great stress. The feeling on the subject is very strong, as it is one which touches their mercantile credit and honour, and I hope the question will be attended to when the Bill goes to the Select Committee."

His Honour THE LIEUTENANT-GOVERNOR said:—"I think I may congratulate the Hon'ble the Financial Member on the fact of the general unanimity with which the necessity for the proposed impost has been acknowledged, and that the anticipations which he had formed of hostility to his proposals, by the revival of that kind of argument which had already been frequently exploded have not been fulfilled. No one, I take it, is glad of being subjected to increased taxation; but the speeches of those who have preceded me indicate that whether the opinions came from officials or non-officials, Europeans or Natives, the measure

which the hon'ble member has put before us is accepted as a necessity. I also feel some satisfaction that there has been an expression of sympathy towards those of my own service, who are specially affected by this new charge on their incomes. Though there is a fashion now-a-days of urging that the members of the Civil Service in India are too highly paid, I venture to assert that, with very rare exceptions, there is no member of the service throughout India who does not deserve every rupee of the salary he receives; and I may safely say this not only of the European members of the service, but of those in the subordinate executive and in the subordinate judicial services. The entire service is a loyal one, and I am sure it will accept, in the presence of the gravity of the situation, which has been explained by your Excellency on the opening of this discussion, the necessity of the taxation to which the Government has to resort. The only regret to my mind—and I cannot hesitate to give expression to it—is the fact that the work of defence which five years ago might have been carried out with comparative ease and leisure and economy has to be undertaken now under some feeling of pressure, in the presence of a possible aggression and at a considerably enhanced cost. The first duty which the Government of India as the ruling Power owes to the people of this country is to protect its frontier against foreign attack; and whatever the personal consequences may be to each and all of us, I am sure every loyal subject will be ready to support proposals which in a grave emergency the Government of India considers necessary for the defence of the Empire.

"I must add in connection with the measure which is immediately before us that the remarks which have fallen from my hon'ble friend Mr. Evans as to the difficulty of working any form of direct taxation deserve consideration. We have experienced that difficulty in every previous application of this tax, whether in the shape of an income-tax, a license tax, a certificate tax or any modification of them. But the difficulty as regards the assessment and realization of the tax has hitherto been greatly enhanced by the consideration that they were regarded as temporary measures. If, however, direct taxation is to form a permanent part of the fiscal system of India, then, no doubt, although the same trouble may again arise on its first introduction, the difficulties will gradually diminish and eventually disappear.

"An hon'ble member has referred to the repugnance which is felt to this tax on the ground that it is not suitable to ordinary times, and should be reserved for exceptional occasions. But the eminent authorities whom he quotes as having acted on that view, such as Mr. Massey, Mr. Inglis and others, spoke at

a time when indirect taxation prevailed throughout the country. Indirect taxation has, however, now almost entirely disappeared, and with its disappearance some form of direct taxation is regarded as necessary to bring under its incidence those who have heretofore escaped all taxation. It is not ,however, on the particular Bill before the Council that I would wish to express any detailed remarks, but rather upon the remarks which fell from both your Excellency and the Hon'ble the Financial Member on the revision during this year of the Provincial contracts. The powers and responsibilities of the Local Governments in financial matters were first determined in 1871-72. That was done under the administration of Lord Mayo, aided by Sir John Strachey. Perhaps there was no measure which added so much to the fame of Lord Mayo's administration, and which was so favourably received by both Europeans and Natives, as this matter of financial decentralization ; and certainly no measure has conferred greater benefits on India. Under the system which prevailed before its introduction certain allotments were annually made to each Local Government to cover the expenses which it had to incur in its administration. Any new charge, whether for a school, a dispensary, a road or any other object, could not be undertaken except with special sanction obtained after a reference to the Government of India. The result was that every Local Government scrambled to get as much as it could out of the resources which were available ; and it generally happened not only that those who clamoured loudest and whose province contributed the least to the Imperial revenues got the most but that those who, for instance, like Bengal, and Burma, contributed most to the resources of the Government of India got the least. It was therefore a very beneficial reform which introduced the system of financial decentralization, and no province has benefited more by it than Bengal. The services which were made over to Local Governments in 1870-71 were not of a paying nature. It was thought possibly, at the introduction of the scheme that it should in the first instance be of a tentative character, and therefore the departments which were surrendered were those of Education, Jails, and other similar departments, from which no ingenuity or ability in administration could possibly expect to secure any return. An advance, however, was made under a more extended system in the time of Lord Lytton's Government, again with the assistance of Sir John Strachey ; and Sir Ashley Eden commenced his administration in 1878 with a much wider decentralization, which included such improvable departments as Excise and Stamps, the development of whose growth he was allowed to enjoy. We may be sure that he made the most of his opportunities. The financial condition of the province began at once to improve, as may be judged from a paragraph of the Resolution which recorded the results of the working of the system

about the time of his laying down his authority as Lieutenant-Governor of Bengal. He then said—

'That the system of decentralization has been thoroughly successful in Bengal is sufficiently clear from the foregoing sketch. The revenues have rapidly increased, independently of new taxation; useless expenditure has been curtailed; and funds have been made available for improvement under all branches of the administration. All grades of the service have shown the deepest interest in increasing the resources of Government, under the belief that the surplus revenue would be available for the good of the province. The three heads of improvable revenue made over to the management of the Provincial Government, with an income of 165½ lakhs, in 1876-77, will stand with an income of not less than 217¼ lakhs in 1881-82.'

"That was an eminently satisfactory result. I believe, when the revision of the contract took place at the close of Sir Ashley Eden's administration, there was a good deal of correspondence on financial matters between the Government of India and the Local Government. I think it is a misfortune that the revision of the contract always takes place in the expiring year of a Lieutenant-Governor's rule. Though I have no doubt Sir Ashley Eden pressed the matter with considerable force in 1882, we must also remember that he was just then about to retire; and it might be expected that with this prospect he would be less forward in the defence of the position than he would have been if his tenure of office had continued. When the revision took place in 1882, the Government of India claimed a large share of the increments which had accrued under Sir Ashley Eden's administration. Without going into details I think I am correct in saying that they claimed the appropriation of some 28 lakhs of rupees, and thus a new start was made with that advantage on the side of the Government of India. It was thought at the time that those were rather hard terms, and it was pressed upon the attention of the Government of India that, in the matter of the excise-revenue under the out-still system, a re-action would certainly occur, and that both on moral grounds, having regard to the increased facilities for drinking, and on financial grounds, measures would have to be taken which would result in restricting the rapid growth of the revenue. And that has taken place in the course of the four years during which I have been at the head of the Bengal administration. The details of the new contract in every branch will have to be discussed in the course of the current year. This is not the time nor the place for the consideration of details, but I wish to enforce the point that the relentless and ruthless attenuation of the provincial revenues is certainly the worst policy which the Government of

India can adopt. Whatever advance or increase has taken place (about 12 to 14 lakhs) under the present contract, owing, I may venture to hope, partly to efficient administration, and partly to the elasticity in the sources of revenue, it should be remembered that the demands which have to be met by the Government of Bengal are extremely heavy, not only in the present but prospectively, and further that many of these charges which have fallen on Bengal during the last four or five years are charges which have not been voluntarily undertaken by the Government of Bengal, but have been imposed upon it by the Government of India. For instance, the question of police-charges, not being properly bearable by municipalities, is one which in principle I most thoroughly accept. Those who pay should be those who control. Before the municipalities paid the police, but the Government controlled it; and therefore the point was very rightly pressed that throughout all Mufassal districts we should take the earliest opportunity of relieving municipalities of that liability. Primary education, again, has involved increased expenditure. The Government of India lately issued a Commission under the direction of the Hon'ble Mr. Hunter, and that Commission justified its appointment and also did a great deal of good in calling attention to the necessity of large increases of expenditure upon education. A great portion of this devolves upon Bengal. I cannot but look at their recommendations as a distant ideal to be some day attained, but as at present altogether beyond the power of Government. The Government of Bengal has had within the last few years to accept the charge of Rs. 5,11,000 a year for the relief of municipalities in the interior; of Rs. 1,50,000 for extension of primary instruction; of Rs. 1,35,000 for the Additional Judges to the High Court of Calcutta. So far as regards the past. The prospective additional charges are also most serious. The question, for instance, of the payment of the police in the Calcutta Municipality as well as in the Suburbs and in Howrah is urgently pressed upon my consideration, and is only stayed by the want of means. Thus the old principle still remains in full force in Calcutta. The Municipality of Calcutta has been called upon to make extensive sanitary improvements which all recognise to be extremely desirable; but the answer to all pressure of the kind is—'We have not sufficient funds'. For my own part I should be glad to be able to place at their credit the sum they now have to pay towards the maintenance of police, which amounts to no less a sum than Rs. 2,80,000 a year. But it is totally out of the question that the Government of Bengal in its present financial condition should be able to give up not less than Rs. 2,80,000 for relieveing the municipality of this burden; and I would suggest to the Hon'ble the Finance Member that as Calcutta is the capital of the Empire,

and the residence of the Governor General for some months in the year, and as the Government of India strongly insist on the prosecution of sanitary improvements in Calcutta, they should bear in mind the necessity of specially assisting the Local Government in giving effect to this urgent reform and thus help the suppression of preventible disease. I would also refer to the fact that in the administration of railways in this province the independence of the Local Government is very small. We are answerable for a great deal, but have little independent authority to deal with the position. We have now to pay something like 6 lakhs interest a year on the capital advanced by the Government of India for construction. The procedure is that when a Local Government recommends a line of railway, and has submitted reports and statistics in furtherance of the project, the Government of India on approving the scheme advances the capital for its construction, on the condition that the Local Government will pay 4 per cent. interest upon the capital from the date of the advance. The understanding also is that when the line is completed the Local Government shall benefit by whatever returns the successful administration of the railway may bring in. It is of pressing importance therefore to the Local Government that the line should be completed as soon as possible. The position, however, is that the advances are now given in such small amounts that the completion of the railway is indefinitely postponed. If, for instance, a railway is to cost 50 lakhs, the Government advances 10 lakhs to begin with, next year it advances three lakhs and the third year one lakh, with an intimation that no more money will be forthcoming for some time. We have to pay interest on these advances from the dates they are made, but without any possibility of return while the line is unfinished, and all the time have to maintain a costly establishment. Such a system is on the face of it indefensible, and imposes a heavy burden upon the Provincial revenues.

"In the direct administration of the country I can appeal to the Hon'ble Babu Peari Mohan Mukerji, who is one amongst many others who are always pressing for larger expenditure on roads and communications. Every railway which is completed requires the making of roads and communications as feeder to it. When the road-cess was introduced in Sir William Grey's time no one opposed it more strongly than the zamindars of Bengal; they said it would ruin them to have to pay the cess. I remember that the argument was used at the time that no class would benefit more by the proposal than the Zamindars; and the result has proved that with the funds thus raised the local committees have been able to construct a large length of roads and communications in every district

which are of immense advantage to landed proprietors. But the position now is that whereas at the outset the proceeds of the cess were available for construction of roads and bridges, the same proceeds are only now sufficient for maintaining and keeping in repair the finished lines; and if additional new works are required (as they indubitably are), petitions pour in upon Government to supply the means for their construction. That, however, is out of the question in present circumstances, and I must point out to those who clamour for such aid that the only resource which is possible is to raise the rate of the cess. In the discussion which took place on the re-distribution of allotments in 1882, I think my hon'ble friend Mr. Hope suggested that, if the resources which were then made available to Bengal were insufficient ,there was always the alternative open to them of local taxation. I believe I am right in saying that my predecessor, Sir Ashley Eden, repudiated that idea altogether. He said. as I think rightly, that, if there was no general taxation undertaken for the whole of India, he should be very loth to apply any form of special taxation to the territories under his control. He did not wish to incur the odium of introducing any such taxation, and besides no scheme for its imposition could ever be adopted without the sanction of the Government of India. But there are also other reasons against such a policy commending itself to a Local Government. The Hon'ble Mr. Steel in his speech quoted in another connection the saying that 'a strong man armed keepth his palace.' However strongly a Local Governor may keep his possessions, there would always be the fear that a stronger than he might come and despoil him of the fruit of his labours. We have always to bear in mind that however succsessful administration may be, and just in proportion to its success, there is always a stronger power behind which claims a share of our accumulations and increments. I don't speak now on the subject of economy, though I shall be ready to assist any Commission which your Excellency may appoint for that purpose, because I despair of any possible retrenchments in Bengal. At a small station which I was visiting the other day, where formerly one officer sufficed for the disposal of the civil judicial work, I found there were now four officers: these four Native officers were housed in an office which was originally intended for a single Munsif. That is only one illustration of what is going on all over Bengal, and in presence of this difficulty the High Court, very naturally demand a much larger expenditure upon public buildings. During the last year the High Court deputed one of the Judges to inspect the working of the Courts subordinate to it throughout the provnce ,and as the result of these enquiries they press upon me with all the authority of the High Court that a very large addition of establishment is necessary if the Judges are to be placed in a position of equality with the position occupied by the executive officers of the province.

"I have made these remarks on this occasion with the hope that when the consideration of the local contract comes in the course of this year under the revision of my hon'ble friend Sir Auckland Colvin—and I am afraid from his looks that I have failed to excite his commisseration—my hon'ble friend and the Government of India will bear in mind how very essential it is to maintain and extend that policy which Sir John Strachey under Lord Mayo's Government first introduced and afterwards enlarged. A policy of expansion, and not of restriction, has followed each revision of the quinquennial contract; and to quote the words which he has recorded on this subject—

'It is hardly necessary to point out how little such a restrictive policy finds any justification either in the present state of the finances, or in the actual results of the different course that was till lately followed in this matter; how manifestly it stands in the way of the reasonable development of Provincial administration and financial responsibility, on which the future progress of India essentially depends.'

"I commend these remarks to the favourable consideration of my hon'ble friend. I hope that, when the comes to review our position during the currency of the present year, he will remember that we have great demands upon us, and that our present resources are inadequate to meet those demands. I should add also that I have no personal interest in this matter, and that before any new contract can come into operation I shall have resigned the office of Lieutenant-Governor of Bengal. What I have urged therefore is in the interests of my successor and of the circumstances and condition of this great province."

The Hon'ble SIR A. COLVIN said:—"I have heard, with the greatest satisfaction the assurances of support which have been given to us both on his own behalf, and on behalf of that body which he so ably represents, by the Hon'ble Mr. Steel. I need not say that it very materially strengthens our hands to know that the measures which we have been called on to undertake commend themselves to the judgment of that great and important section of our community to which my hon'ble friend belongs. For my own part I have never had the slightest doubt that any measure which it was my duty to bring before them, and which was based upon equity, sound finance and reasonableness, was sure to obtain from the mercantile community of Calcutta, however, disagreeable the consequences it might entail, a ready and respectful hearing, and for myself their ungrudging support. When I spoke of the shrinking from burdens to which my hon'ble friend has alluded, it was of the former debates on the subject of the income-tax of which I was thinking, and of occasional expressions of opinion which I have recently come across in the Press. To my hon'ble friend, as to those on whose

behalf he speaks, I have only to express my unmixed gratification at finding that our judgment is confirmed by theirs, and that the whole of our community is ranged under the same banner, with the same undivided end and for the common good of the country.

'My hon'ble friend, I observe, is an optimist. He sees great benefit to this country from a depreciated standrard. He thinks that, though persons with fixed salaries may suffer, the country as a whole is benefited, and that even the Government may be reassured. He points to the increased exports as the main proof of his thesis, to the greater facilities for placing Indian produce on the market which are afforded by the present state of our currency, and to the increase in the revenues which may be expected to arise from the greater general prosperity. Now, this is a very large and an extremely difficult subject, which I cannot at present hope adequately to discuss; but I may point out two considerations which I think are difficult to reconcile with the optimist views entertained by my hon'ble colleague. I should like very much to think that with so much happiness going some of it may come my way; but it seems to me a very questionable position to assume that the great increase to our exports is mainly due to the low rate of exchange. I believe that it is more owing to the extension of our railways, to the lowering of freight, to the reduction of railway-charges, and to the growing facilities given by the Suez Canal, than to the depreciation of our currency; and I cannot, therefore, think that the expansion of our prosperity will be proportionate to the depreciation of our standard. If silver has fallen 8 per cent. since 1880, freights have fallen far more. Railways have extended; railway-charges have been lessened. On 7th December 1880, canal-freights in Calcutta were from £2-16-3 to £2-18-9 per ton; on 14th December 1885, they were from £1-7-6 to £-1-10 per ton—a fall of 50 per cent. There were on 31st December 1876, 6,833 miles of railway open in India; on 31st December, 1880, there were 9,310 miles; on 31st December, 1885, there were 12,285 miles. I cannot, therefore, bring myself to believe that exchange is the sole, or the most important, factor in the extension of our export-trade which has of late years attracted so much attention. In the second place I would ask my hon'ble friend to remember that if our export and import trade has shown great vitality since the fall in our currency, we have, on the other hand, to maintain somewhat about five crores of rupees annually on our revenue estimates, which, since the relative value of silver and gold began to change, have to be locked up and kept from circulation, in order to enable us to meet the extra burden imposed on us in connection with our home charges. My hon'ble friend, I regret to see, is among the prophets. I regret it because I think

that prophecy is a risky and speculative line of business, unsuited to commercial aptitude. He has told us that it will take the rupee ten years to fall to 1*s.* 2*d.* I cannot meet him on this ground : I know nothing certain of the future : I think I can see a serious omission in his calculation when he bases the silver production of the next ten years on the limits of the silver production of to-day; and I cannot shut my eyes to the fact that in the last year alone silver has fallen to the extent of what he looks upon as its future normal fall in three years. But even at the present rate of 1*s.* 6*d.* we shall have withdrawn at the end of those 10 years, on the figures I have above given, 50 crores of rupees from the pockets of the people ; and I do not see where any adequate compensating advantage is to come to them. I cannot dwell further on these intricate points at present ; but when I am told that a currency the value of which relatively to gold is what ours has now become will be the source, alike to Government and the people, of unmixed prosperity, I cannot but hesitate to accept these glad tidings of great joy, and to enquire whether other causes have not been at work to which in great part the improvement of our revenues may be assigned. I am aware that I have no right, and I certainly have no desire, to speak authoritatively or with exceptional experience on one of the most difficult questions to handle which has ever occupied the attention of Governments and economists ; I have no wish to say 'I am Sir Oracle—let no dog bark' ; but I would venture, if I may, to deprecate the adding another optimist view to a question on which, if not in India, at least in England, there are too many optimist views already. As the question is not one which enters into the practical scope of our discussion to-day, with the assurance that it is at the present moment engaging the most anxious, the most earnest and the most unremitting attention of the Government, I may turn to the next point in my hon'ble friend's remarks which calls for notice from me. He has expressed a wish to see the export-duties on rice abolished. That wish, I may freely admit, I share ; I admit also the cogency of much of my hon'ble friend's reasoning ; but I take two objections, which must practically be allowed to carry great weight, however much we may desire the removal of these duties. In the first place, as I do not share his hopeful views of that surplus which he dangles before my troubled eye, I cannot bring myself to recommend, in our present circumstances, the striking off the potential estimates or the absorption as a source of revenue of the round sum of £700,000. In the next, I cannot but think that so long as our duty does not unfairly weight our rice in its competition with the rice of other countries (and I do not understand that this is urged upon me), the argument against it is incomplete. I do not deny, in other words, the force of the arguments in favour of abolishing the duty, but I think that the duty is not of a nature so objectionable

and so opposed to good economical doctrine as to justify our abolishing it at a time when our revenues are in my judgment, and with due deference to my hon'ble friend, in a very critical state.

"In respect of borrowing in England it will not have escaped my hon'ble friend's attention that we are in point of fact at the present time so doing; and if for local bodies we propose to borrow in the local market, it must be borne in mind that the extraordinary state of the silver market, the reports which reach us of the silver yield in Australian mines, the unsettled policy of the American Government, and the utter uncertainty which hangs round the future of silver, may well cause doubt as to whether, in spite of the comforting assurances of my hon'ble friend ,we are so safe on the sunny side of 1*s.* 2*d.* as he himself would have us believe.

"It has been a pleasant surprise to me to find that the proposed tax has met with so little opposition on the part of this Council, and especially that my friends Mr. Peari Mohan and Mr. Mandlik, find themselves in a position to support us. We have, indeed, been told, as I anticipated, that an income-tax is objectionable because it is inquisitorial and because it is unsuited to the genius of the Indian people ; but the case against the tax has been put very moderately. Now, with regard to this matter of the inquisitorial nature of direct taxation in India of which we are constantly reminded. It is not in regard to India only, I may remind this Council, that objections have been urged in respect of inquisition. Students of text-books on this subject are familiar with the fact that for many years after the introduction of an income-tax into England this particular objection was to them of constant recurrence. But time has there worn down, if it has not entirely effaced, the edge of this class of objection. And what time has done elsewhere time may be trusted to do here. In point of fact, as your Lordship said last Monday, the operation of the license-tax during the last eight years has been of no small assistance in the matter. We are far removed from the day, which I myself can well remember, when the first introduction of direct taxation sent a tremor throughout the Peninsula. All have learnt and all have profited by the experience of a quarter of a century. We, on the one hand, have found that we must avoid as much as may be the multiplication of returns, and a variety of other points, which were in their nature vexatious, and which and were not essential to the operation of the tax ; the classes liable to assessment, on the other hand, have learned and are still learning that with a little honesty, a little punctuality and a free recourse to the regular remedies open to them, they can escape the ills which they the more dreaded, because they were ills they wotted not of. My

hon'ble friends Mr. Evans and Mr. Peari Mohan have warned us that the tax is one which in its working will cause much difficulty, and that it will give rise to considerable practical injustice. We have been told that every effort will be made to evade its just incidence. There is a well-known legal maxim with which my hon'ble friend Mr. Evans is no doubt familiar, to the effect that a man cannot profit by his own fraud; and if I am told that an important section of the community must be exempted from direct taxation because it is constitutionally fraudulent, I must fall back upon that legal maxim. If I am to be assured that the trading and commercial class in India should not be assessed to direct taxation because they cannot deal honestly with the Government, I must reply that that is a plea which to my mind is wholly inadmissible. But I do not resort to such a reply, because I am convinced that the imputation is unwarranted. I do not believe that the great section of the community concerned, whose reliability and honourable discharge of their business obligations is of world-wide notoriety, is open to that indictment, or that they differ in any material respect from the great body of the Indian people of which they form so important a part, and whose character certainly is not open to the reproach which would seem to be levelled against a section of them by those who take this objection.

"My hon'ble friend Mr. Peari Mohan has asked me for a pledge as to the duration of the tax. No Financial Member who has any pretension to wisdom will ever give such a pledge. Prudence is to a Financial Member what modesty is to a woman; and if he once throws it aside he must expect to descend to that fallen class from whom nothing more may be hoped for. Nor in asking for such a pledge is my hon'ble friend consistent with the assurance he has given us that he accepts the principle of this Bill. If the principle is sound, it is unreasonable and inconsistent to promise that its application shall be of limited duration. If it is good for to-day, it is good for to-morrow and thereafter. So that I must decline to give any such pledge as I am asked for; nor would it be of any value if I gave it. No pledge could bind my successor, who must be guided by the exigencies of the day in which he is called upon to administer our finances.

"My hon'ble friend Mr. Peari Mohan, I see, is not yet quite happy about the Famine Insurance Grant. He has re-quoted a few words of Sir John Strachey's which I quoted the other day, and he has cited a passage from a speech of Lord Lytton's. I need not say anything more about the former extract. It must be read with the context which I quoted last Monday to the Council, and its meaning is perfectly obvious. But, in regard to what fell from Lord Lytton, I may remind my hon'ble friend that the authors of the being of the Famine

Insurance Grant were Lord Northbrook and Sir John Strachey, and that if one wishes to learn the characteristics of a child one must address oneself to its parents. Lord Lytton was merely its sponsor; and if Lord Lytton promised and vowed more things in its name than it was ever likely to accomplish, he did no more than sponsors daily do, and must be held in no greater degree responsible.

"Next, in regard to the import duties. Mr. Mandlik has urged and has quoted authorities to prove that their re-imposition would not be felt. That I should wish to take leave to say seems to me beside the question. What we are concerned to see is that taxation should be imposed proportionately to the means of the person taxed. If the import-duties were little felt by the poor man, they would *a fortiori* be far less felt by the rich man. What we have to look to is that each man should pay in proportion to his means, and not merely that the poorest should pay a tax which is not absolutely unbearable.

"I should wish, however, to say a few more words on the subject of the import-duties, because I am compelled to disagree with a great deal of what I daily hear about it. I am well aware that the view I take is not the popular view; but a man must have the courage of his opinions. We have been told that the import-duties should have been retained; and, in public discussion on the subject we are constantly assured that the import-duties were abolished solely in the interest of Manchester. I may be very obtuse; but I wholly fail to see how, in a matter of this kind, we can separate the interests of Manchester from those of India, or the interest of the manufacturer from that of the consumer. If the one above all things, desires a free market for his goods, the other, above all things, requires the removal of all restrictions the effect of which is to raise upon him the price of the goods. The profits of Manchester are the economies of India. I think we may find a parallel which is not unsuitable in the case of the Isthmus of Suez. It was Europe, not Asia, which pressed for the piercing of that isthmus; but would any one seriously maintain that the Suez Canal was made in the exclusive interests of Europe, and that Europe alone has benefited by it. The exchange of commodities, the commerce and the wealthof the world, the producer, the manufacturer, the carrier and the consumer,have alike benefited by it, as they must benefit by the removal of all restrictions and obstructions, whether they present themselves in the form of an isthmus or in the form of an import-duty. The only Indian interests which seem to me to have been sacrificed are those of the persons who hitherto had enjoyed the monopoly of exemption from taxation;

and if those interests are to be sacrificed by the abolition of the import-duties, I must say that I should regret it no more than the sweeping away by the waters of the Canal of the privileges of the Bedouins whose inheritance the desert has hitherto exclusively been. If a narrow neck of land or a narrow section of society stands in the way of benefit to the general community, then I say that it is the narrow neck or the narrow section which must be made to give way, and not the community at large. So that I cannot for a moment concur with those who would re-impose an import-duty or block up a canal, who would replace free circulation by obstruction, and who would raise the prices of Manchester goods against us, because, among other reasons, the benefits which the English manufacturing class have derived are more obvious to their eyes than are the benefits accruing to the Indian consumer.

"But it will be and has been said, that while this is all very well, it does not alter the fact that £1,200,000 were struck off the revenue, and that the country could not afford it. Putting Manchester, in other words, out of the question, I am assured that the import-duties should have been retained because we could not afford to part with them. Well, let us look at a few figures. We have seen that the average surplus of the past three years has been £700,000; we know that the Famine Insurance Grant is provided from annual surplus funds of £1,500,000; so that we have had an annual surplus of £2,200,000; and it is now argued that this was not sufficient, and that we should have added to this £1,200,000 more; or in other words that the import-duties should have been reduced, because we ought to have maintained a surplus during the last three years of nearly three and a half million. Who, in the name of reason, could have hoped to maintain such a surplus? Would the Council like to know what would have happened if we had attempted to maintain it? I am no thought-reader, but a plain simple Member of the Governor-General's Council; but I think I could say what would have happened. We of the Finance Department should have been bombarded for fresh funds by the Military Department; we should have been seized by the throat by the Department of Public Works; the Home Department would have seized us by the coat tails; the Revenue and Commerce would have lifted its small voice; the persuasive tones of the Legal Member would have demonstrated the necessity of increased supplies; His Honour the Lieutenant-Governor of Bengal, in common with the other Local Governors, would have expected his quota of this unhappy surplus; I doubt whether even the highest authority in the land himself would have had the courage to restrain his august

hand from demanding a share in the general plunder. Expenditure, much of it unnecessary, would have increased, and would have established itself; extravagance would have been the order of the day; and when the day of retrenchments and reduction came —as come it assuredly would—the whole administration must have been thrown out of gear. If, on the other hand, so very considerable a sum as £1,200,000 had been maintained for the extinction of the debt or for the construction of railways, how long would the tax-payer have put up with it? Would he not have said he was doing too much for posterity, and bearing too large a share of a burden towards the removal of which he already annually contributed a surplus of over two millions? We should have been abstracting annually £1,200,000 from the resource of the country, and employing it in redeeming a public debt bearing 4 per cent. interest by moneys which, in private hands, would be invested at 7 or 8 per cent., and be utilised in the production and the renewal of wealth. To make railways from surplus revenues which one may happen to possess is one thing; to maintain, at the expense of the tax-payer, a large surplus for the sole purpose of making railways seems to me to be quite another matter.

"My hon'ble friend Mr. Mandlik has argued that the abolition of the import-duties stands condemned, because it has not sufficiently resulted in increased imports of munufactured goods. I cannot follow his calculation. The value of imports of manufactured goods, treasure and Government imports apart, which in the 10 years before 1878-79 averaged 35 crores, was, in 1884-85, 53 crores; the average of the four years from 1878-79, when the first duties were remitted, to 1881-82, the year before the final abolition, was 47 crores; the average of the three years from 1882-83 to 1884-85 has been 51 crores. The percentage of increase from 1878-79 to 1881-82 has been 28; from 1878-79 to 1884-85 it has been 45. If we remember that during this period prices have been steadily falling, and that these figures represent values, not quantities, the real increase will be much greater. My hon'ble friend Mr. Mandlik has overlooked this important point, and the oversight vitiates all his conclusions. I am not so foolish as to suppose that the great growth of our imports since 1878-79 is due solely or mainly to the abolition of the import-duties. It is due to a variety of causes. It is partly due to the increase in our exports; it is partly due to the cause to which so much of the increase of our exports is due, namely, to the extension of our railways and to the consequent improvement in the distribution and cheapening of commodities; it is due to the forcing of accumulated stocks, owing to the fall of prices in England, upon the Indian market; it is very largely due to the fall of prices in England; but unquestionably it is also partly due to the abolition of import-duties. If the state

of our exchange has, on the one hand, enabled us to place large stocks of grain and of seeds on the European market, and has prevented us from feeling in that direction the full effect of depression of prices which weighs so heavily at home (and to which, so far as the commodities are concerned which form the chief staples of our exports, we have not a little contributed), it has, on the other, handicapped us in our power of purchasing piece-goods —and has supplied an additional argument to what seem to me the unassailable economical grounds on which those duties were abolished.

'My hon'ble friend Mr. Mandlik has criticised at some length the expenditure in various branches of the administration with which personally I am not very intimately acquainted. I will not therefore follow him further on this ground than to say that to his desire to introduce economy into the administration, and to extend the employment of Native agency, I personally and entirely subscribe. Whether from the more narrow ground of my own special province of finance or from larger political considerations any practical efforts suggested in this direction will have my constant and strenuous support. I believe that in the dual agency by which executive administration is and must be carried on in this country we should endeavour and make it our great aim to march not on parallel, but on converging, lines. His Honour the Lieutenant-Governor has dwelt at length on the question of the Provincial revenues. He sees, or thinks he sees, that, like Cassius I have a lean and hungry look, and that I am animated by evil intentions. He fears that in the revision of the contracts I shall, as the French say, draw the counterpane too much my way, and that he will be left in the cold. There is a Persian proverb which says 'Awal Khwesh, bad'hu darwsh,' which, very liberally translated, means 'Devil take the hindmost.' But let me reassure him. In this matter there will be no foremost and no hindmost, we shall approach the matter in that spirit of justice, of moderation and of reasonableness in which only it can be effectually handled. We shall be most ready to listen and to examine all that the Provincial authorities have to urge, but we shall at the same time be compelled to insist, as I said last Monday, on an equitable re-distribution of the new burdens which have been imposed upon the general revenues. To that I am sure His Honour will take no exception, and we must leave the working out of the details to those who will be charged with the task.

"And now, my Lord, I think that I may bring this, my second *apologia*, to a close. I am conscious that I have but glanced at the surface of much that has been said; something of what has been said I have not so much as attempted to glance at; but this, not because I am gravelled for lack of matter, but because

had I travelled over the whole ground taken up during this discussion, I should have wandered far from the issues actually before us. I have stated why I cannot share my hon'ble friend Mr. Steel's hopeful view of our prospects, and why I am unable to hold out at present any hope of the remission of the export-duties on rice. I have glanced at the argument against the income-tax based on its inquisitorial nature, and have given my grounds for doubting whether these arguments from lapse of time have not lost much of their force. I have pointed out that the question before us is one of the equitable distribution of taxation, and why the import-duties alone, without direct taxation, are not consistent with such a distribution; I have contested the view that the import-duties should be re-imposed I have, I hope, re-assured His Honour the Lieutenant-Governor in regard to my designs on the Provincial contracts; and I leave the matter now, so far as I am concerned, to the decision of the Council, in the confidence that we shall be accorded its support.

The Hon'ble MR. HOPE said :—

"Our hon'ble colleague Sir Auckland Colvin warned us on the last occasion when we met to consider this Bill, that we should probably find to-day various ancient weapons furbished up for use in an attack upon it, but I confess I hardly expected to hear it seriously contended that direct taxation was unsuited to India and obnoxious to its people.

"Direct taxation, I venture to maintain is not a novelty in India, as too commonly supposed, but a most ancient and well-known institution. Native Governments have from time immemorial made the non-agricultural classes contribute their share of the expenses of the State. To the Native mind in general, this appeared only just, fitting, and to be contentedly born. Between cultivators and traders, poor and rich, no sense of unequal treatment could subsist under the system which our predecessors in the Empire for centuries pursued. But when we superseded them we gradually abolished the structure of direct taxation which they had laboriously raised. In the elder Provinces this change was consummated by about the year 1844, in the newer ones it took place later, but the only survivals of the Native system now are the capitation-tax in Burma and the pandhari-tax in the Central Provinces, which are specially dealt with in the Bill now before us. On the other hand, all Native States now remaining have, speaking broadly, retained their old method of direct taxation to this day.

"What is the result? When we collect a paltry half million or so, British India rings with discussions and objections, while to our Native feudatories direct taxes, under innumerable forms and names, and to a proportionately larger amount

from a far smaller population, flow in without a murmur. This fact is so remarkable, that it appears well worth our while to endeavour to examine into and ascertain its causes.

"Having served for considerable periods in Native States,and been directly and indirectly concerned, as a Political Officer, with their administration, I have had some opportunities of observing their system in this respect, and have myself been connected with the collection of direct taxation far heavier than any which has ever been contemplated in British India. The characteristics of their system may be concisely described as traditional acquaintance with individuals and their circumstances, rudely equitable apportionment between man and man, permanency or dislike of change, and employment of the regular localised revenue agency. In 1880 a middle-aged Native Chief, who is his own Prime Minister, and a most intelligent personal ruler, described to me his own practice in a few words. 'In my State' (he said) 'the name of every householder, not an agriculturist, is shown in the books of the village to which he belongs, with the sum he and his ancestors have been paying. This is levied from year to year. Only on extraordinary occasions is any alteration made. If the family became "divided" the sum might be made into shares at their request. If it notoriously fell into great poverty, some permanent reduction might be conceded, or if the business were quite changed and improved, I might increase the annual sum. But to get a small sum I should never cause an outcry. Everything would be inquired into and decided, in the presence of the parties, on the evidence of the village headmen and neighbours.' I am aware that this description might not apply precisely to all parts of India, as also that Native States are subject to paroxysms of tyranny and that even in those well administered acts of injustice may occur. But it is sufficiently typical, and accounts for the fact of the noiseless levy in these States of direct taxation.

"Turning now to British India—in 1860 we were obliged by financial necessities to revert to direct taxation, which we had gradually abandoned, but instead of a Native model, softened and adapted to our circumstances, we unfortunately set up that of the income-tax, as in force in England. To get direct taxation into good working order, even after a suitable model, would have been a work of time and care, in the absence of the long-standing record of the names and resources, of house-holders which we had in earlier years done away with. But what, except failure, could attend a sudden call on relatively ignorant and unlettered millions at short notice, to assess themselves, or prove right of exemption, to send in elaborate

returns and calculations, and to understand and watch their own interests under the system of notices, surcharges, claims, abatements, instalments, penalties and what not, consequent thereon. Necessarily there followed a long train of evils. An army of tax assessors and collectors temporarily engaged could not be pure. They were aided by an army of informers, actuated by direct gain or private animosity. Frauds in assessment and collection went hand in hand with extortion in return for real or supposed exemption. Inquisition into private affairs, fabrication of false accounts where true ones did not exist or were inconvenient, acceptance of false returns, rejection of honest ones, unequal treatment of the similarly circumstanced—all these more or less prevailed. The tax reached numbers not really liable, for zamindars illegally recovered it from tenants, and masters from servants, while underlings enriched themselves by the threat of a summons. Acts XXI of 1861 and XVI of 1862, while affording relief in some respects, practically stereotyped many inequalities and heart-burnings. In later years, the system of assessment by broad classes was an improvement on the earlier complications, but the advance of local officers towards equitable assessment was perpetually being cancelled by the alterations in rate and liability which I shall presently notice.

"Renewed direct taxation in British India thus made a false start, from which it has never recovered. Possibly, with time and care, a great improvement might have been effected, if the law had remained unaltered. But, unluckily, with its too English form, came the idea that the tax was to be as in England, a convenient means of rectifying Budget inequalities, and a great reserve in every financial or national emergency. In consequence of this idea, incomes between Rs. 200 and Rs. 500, which had been taxed at 2 per cent. in 1860, were exempted in 1860, the 4 per cent. rate was reduced to 3 per cent. in 1863, and the whole tax was dropped in 1865. In 1867 it re-appeared in the modified form of a license-tax, at the rate of only 2 per cent. at most, but reaching down again to incomes of Rs. 200. In 1868 it became a certificate-tax, at rates a fifth lower, and again commencing with a Rs. 500 limit. In 1869 it became once more a full-blown income-tax at 1 per cent. on all incomes and profits of Rs. 500 and upwards. In the middle of the same year it was suddenly nearly doubled. In 1870 a further rise to fully 3⅛ per cent. occurred: but with better times, the rate fell in 1871 to 1¼ per cent., with a limit of Rs. 750, and in 1872 the limit was further relaxed to Rs. 1,000 and upwards. In 1873 came a second period of total abolition, to be succeeded from 1877-78 by the new series of Acts with which we are all familiar. Along with the changes in rate and incidence just described, came changes in name, form, classification, and

procedure. With one object or another, twenty-three Acts on the subject have been passed since 1860.

"This long recital of what is well known to my hearers will have been tedious, I fear; but it seemed necessary to enforce my point, which is, that we have hitherto attempted direct taxation in British India under conditions which rendered success impossible. Owing to the perpetual changes, the people, never certain who was liable or what was the sum due, were an easy prey for fraud and extortion, while the superior officials time after time found their labours thrown away, and a fresh battle with guess-work and deception to be begun. That both officials and people should in 1872 have united to condemn an impost hitherto associated only with such evils, is not to be wondered at. Our abandonment of the machinery of direct taxation inherited from our predecessors was one of the things in us which the mass of the people dislike without being able to understand. Our new-fangled and European attempts to retrace this policy seemed to them tyrannical, compared with the rude expedients familiar to their fathers. All things considered, the abolition of the income-tax in 1873 was probably the best thing that could then be done.

"But direct taxation could not long be dispensed with. A new start was made in 1877. This start was, I think decidedly well intentioned, made in considerable appreciation of past defects and desire to avoid them. It was wise to begin with trades and classification, but it seems to me that too much was made of supposed local differences, and too much importance attached to local action. Bengal, Madras and Bombay passed Acts of their own; Northern India was dealt with by the Imperial legislature. As a necesssary consequence, further legislation was soon needed to remedy inequalities. Some good was thereby effected; more would have resulted, but for the, as I think, unfortunate abandonment of the Bill introduced in November 1879.

"Act VI of 1880, with the local Acts it amended, is still in force. Their continuance for five years unaltered has done a great deal to remove such evils as arose from frequent changes. But still we find an unjust system of maximum everywhere, while the amount of maximum varies, and the classification essentially differs, in different parts of India. In short, the incidence differs with every class, the poor pay more in proportion than the rich, and the richer a man is, above a certain point, the less he has to pay. The measure is open to grave objections of principle and detail; it represents no school of economic thought, no section of public opinion; it satisfies no one, and must obviously be ephemeral.

"In this state of affairs, we have presented to us the dilemma of abolition or reform. I need not follow Sir Auckland Colvin in his review of other alternatives to direct taxation which have been suggested, because, though agreeing with his elimination of them, I hold the issue to be different. I take my stand on the principle so eloquently enunciated by His Excellency the Viceroy when the motion for leave to introduce the Bill was before us—that of abstract justice. How much longer, I would ask, are we to tolerate the fact that non-agricultural wealth, though considerable and daily increasing, pays very little, in proportion to its means, for the protection and great advantages it enjoys under British rule—to which the very existence of the bulk of it is attributable ?

"I therefore elect unhesitatingly for reform, for such reform as, I personally hope and believe, will ensure the incorporation of direct taxation as a permanent part of our fiscal system. Whatever may hereafter, at least in the near future, be the improvement in the general revenues, whatever surplus may in such future be deemed available, after duly providing for the development of the resources of the country and the reduction of debt, ought in my opinion to be applied to relief in other directions, such for instance, as that of the rice-duty indicated by my hon'ble colleague Mr. Steel, but no reduction in direct taxation should be conceded. Such a reduction would be unjust, as impairing even such advance towards a fair balance of taxation between agriculturists and non-agriculturists as will be attained by the present measure. But it would also be undesirable, since avoidance of change is essential in order to prevent fraud and oppression in the levy of the impost. Differing from my hon'ble colleague Mr. Peari Mohan Mukerji and from Sir Charles Trevelyan and Mr. Massey whom he quotes, I hold that in India an income-tax is utterly unsuited to form a financial reserve. In England the mass of the people are accustomed to watch the commercial and agricultural prosperity of the country, competent to understand changes and causes, and able to accept, with intelligent equanimity, an extra penny of income-tax, or an increase of duty on some article of consumption. But in India the position is just the reverse, and such a condition is absolutely unknown. Certain sections of the community, indeed, are able to understand and criticise the financial position as well as people in England can, if not better. As a rule, the people are in a totally different intellectual and moral condition. Every change which takes place is a source of anxiety, of disquietude, of speculation, and of rumours which are often unreasonable or even absurd. I can imagine few conditions more economically and commercially prejudicial, if not more politically dangerous, than that all India should come to be thrown annually, from December to March, into a state of doubt and

speculation as to what their fiscal burdens for the coming year would be. On this subject I venture to draw attention to the weighty remarks made by Mr. Gladstone in a debate in the House of Commons on April 18th, 1853 :—

* * This country cannot bear a revolution once a year. I venture to say in like manner that it cannot bear once a year a reconstruction of the income-tax. Whatever you do in regard to the income-tax, you must be bold, you must be intelligible, you must be decisive, you must not palter with it,'

Mr. Gladstone was speaking of the income-tax in England. His remarks, however, apply to any system of direct taxation whatsoever, and I venture to think that they are even more applicable to India than to England.

" Holding these views, as I do, I readily support the Bill now presented. My approval of such a measure is due to no new-born zeal, to no tardy conversion. My opinion has long been matured. I may mention that a re-adjustment of the public burdens, comprising increased direct taxation, was for a time, under my strong advocacy, a part of the financial programme of 1882-83, and I much regretted its abandonment in favour of a policy more attractive but less sound. The present Bill though in one or two respects scarcely such as I should desire, is the same in principle and in leading details as what I then proposed. Its success depends, I consider, upon its recognition as essentially a new departure, on lines different from those which experience has taught us to avoid, and upon its future life and administrative working being regulated accordingly. Two points relating to its working seem to me of sufficient importance to warrant special notice to-day.

" First of all, it is essential that the machinery be of good quality throughout. The evils which are likely to arise when temporary, unsuitable, or ill-paid agency is employed in the assessment and collection of a direct tax were amply illustrated in a very searching enquiry which was made into the whole question of taxation in 1881. I hope that I shall not be thought guilty of undue partiality for my own presidency, if I commend to notice the principle adopted in Bombay in this respect. It has always been the rule there to place officers of superior rank, usually the mamlatdars (*i.e.*, tahsildars) of the sub-divisions on special duty for two or three months to do the assessments personally, with the clerical aid of one or, as most, two of the regular sub-divisional establishment. Officiating promotion being given to fill their places in the regular staff, new men, if required at all, came in low down and had nothing to do with the tax. The

mamlatdars acted under the direct check of the Assistant or Deputy Collector in charge of their division of the district. The latter officer, being on tour throughout the fair season and in constant intercourse with the people, took considerable personal tests, heard appeals on the spot, and was a constant check upon abuses. I venture to hope that the analogy of this system might be followed, *mutatis mutandis*, throughout India, and that efficiency in this as in many other matters, might be materially promoted, if Assistant and Deputy Collectors were more generally placed, as in Bombay, in charge of the whole administration of divisions (subordinate to the Collector and Magistrate), and required to be on tour for a rather longer period of the year than is in some provinces customary. As a part of this system, would follow ample leisure, including a whole fair season, for deliberate assessment and collection, and the hearing of appeals, freely, with less limit of time, and on occasions convenient to the people.

" The principle which I here advocate, of avoiding temporary agency, should reach down to the villages in all Provinces when the organisation will admit of this, or should approach to it as near as possilble. A permanent register of assessees to the tax should be a part of the village-records, kept up by the village-accountant, revised from year to year, according to changes of assessment which might occur, though these should be as few as possible, and this register should be regularly inspected and countersigned by superior authority. The amounts should be collected by the same agency as, and usually along with, the revenue-demands, all special tax-collectors, chaprasis, and the like, being eschewed. The same principle, on the other hand, should govern as far as in each case may be the assessment of Mufassal towns and cities, officers and records being permanent, though not necessarily employed on the work of the tax alone. The Presidency-towns would, of course, need special treatment appropriate to each.

" In making these suggestions, I do not overlook the peculiar administrative arrangements of Bengal, arising out of the Permanent Settlement, but I understand that even there a gradual advance to a much more complete fiscal and executive organisation is recognised as desirable and not out of reach, and I would add that I do not advocate more than arrangements on the same principle in cases where similarity in detail is impossible. My recommendation, however, is justified by the fact that although in Bombay the tax was so administered, that it yielded, on an average of years, two-thirds of the amount produced by Bengal and Assam, from a population only one-fourth of theirs, yet the province is admittedly the one where the least discontent and outcry have prevailed, and where an income-tax has long been openly advocated by powerful sections of both European and Native public opinion.

"No less important than reliable inferior agency is competent supervision of the assessment throughout the province. The inequalities which have arisen through the want of this both between provinces and between districts of the same province, were very forcibly shown by the enquiry already alluded to. The salary of a special officer in each province for a few months, or even for the first two or three years of the new income-license-tax, would be paid over and over again, not merely in money, but in the additional equality and justice which would be insured. I think I may venture to say, though I speak without book, that my hon'ble colleague the Financial Member will not grudge whatever reasonable expenditure may be deemed necessary to provide effective and reliable agency for the recovery of the tax.

"The other point, not less important than good agency, is the use of the powers of assessment and revision from year to year with care, tact, and moderation. All feverish anxiety to screw up particular classes or localities, or to adapt assessments to the varying circumstances of the year, should be avoided; petty increases and changes should be foregone. What is needed is a patient and continuous endeavour to learn and record the real means of parties, to prevent the unfair escape of individuals, and to build up a framework of taxation such as is found in Native States and normally worked upon.

"Did I not believe that it is the sincere desire of the Government of India that the new tax should be thus looked upon, and so administered in these two respects, and that it is to be in all ways a new departure on lines essentially different from what is gone before, the measure would meet with my opposition instead of my cordial support. I do not expect that direct taxation can ever be perfect—it is open to abuse even in England,—but I see no reason why it should not be gradually made in India as good as its nature will allow.

"I have already said that I should not follow Sir Auckland Colvin in his review of alternatives, and I shall not follow other hon'ble members in their suggestions of such, but I am obliged very briefly to touch on the question of the import-duties, because my hon'ble friend Mr. Mandlik has alluded to me personally and to the opinions I expressed in this Council in 1875. He has quite correctly represented the views I then held, and I now see no reason to question their soundness. If the adoption then accorded to them had continued longer, and if an excise upon Indian mills had in due time been imposed, when found necessary, it is possible that we might have retained the duties to this day. But in 1878 measures were taken which, in the balance of difficulties then presented, it would be rash in me to condemn. They introduced disruptive principles into

the tariff, and inevitably shattered and brought down the entire structure. Supposing, however, that the event had been otherwise, that no action had been taken in 1878, and that the import-duties were existing at this day, will the hon'ble member seriously contend that, although they would be a convenient source of revenue, they would reach the rich non-agriculturist in any deegree at all approaching that in which justice to all other tax-payers demands that he should reached ?

" In conclusion, I feel it incumbent upon me to trouble the Council with a few remarks regarding the question of silver and exchange. By way of introduction, I would ask leave to read an extract from our Proceedings of 21st March, 1877, in which I am reported to have spoken to the following effect :—

' Although there were occasions when the strength of a Government might be to sit still, he (MR. HOPE) did not think that this was one of them. The British Empire was interested in the silver question as much as any nation in the world—in fact, more so in consideration of the special double life which it possessed, a life both European and Indian. The English nation had in England an enormous debt, contracted and payable in gold. It had likewise there a vast manufacturing industry for export, which depended in a great measure on the ability of the silver-using nations with which it dealt to pay for its products. Here in India, on the other hand, it had a heavy debt to defray in gold, while all its assets were raised in silver. Thus if there were any serious rise in the value of gold, such as he for one believed had taken place, rather than a fall in the value of silver, England must suffer both at home in her debt obligations and her current commerce, and in India by the depreciation of the national—he meant in the sense of the Indian national—capital, which was almost entirely in silver, by the increased weight of the obligations which she had to meet in gold, and by the decrease in the value of her means of meeting them. He believed it therefore to be entirely the interest of England, whether in England or in India, to have as large a circulating medium as possible, and one which should embrace both gold and silver as a full legal tender. It would be gathered from what he had said that he was one of that minority—and he must admit with regret that they were at present a rather small minority—who were in favour of bimetallism. So long ago as August last (1876) after studying everything on the subject which was within his reach, he had written privately to his friend Mr. Chapman, the Financial Secretary, that he could come to no other conclusion than that that system was the right one. He believed it was quite possible for Government to fix a ratio between gold and silver after due enquiry, and that it was just as much the duty of Government to do so as to take any other measures for the protection of the community. No doubt such a step could not be taken without an understanding with other nations. But if they were to wait till all nations agreed on the subject, or till they could get together a sort of universal conference, they might have to wait for ever.'

" How far these views have been confirmed by experience, I leave my hearers to judge. For myself I can only say that from that day to this, I have watched

most carefully all the phases of the question, I have studied all notable utterances upon it, I have neglected no opportunity which lay within my reach of pressing for practical action, such action as I deem indispensable in order to place our finances in a safe position for the future, and to recover, as far as may be, the position we have lost in the past. I entirely agree with my hon'ble colleague Sir A. Colvin in holding, though I might justify my faith by somewhat different arguments, that a low exchange is not that benefit to India which it is in some quarters supposed to be. I am convinced that unless a remedy be applied soon, before prices of Indian produce are seriously affected, the result will be a practical confiscation of a proportion, corresponding to the depreciation, of such part of the circulating capital of the country as consists of silver money. None the less does it seem clear to me that the present relative values of gold and silver have a disastrous effect upon trade in general, and upon large classes of the population of England. We may extend direct taxation so as to redistribute the public burdens more equitably between the agricultural and non-agricultural classes; we may effect reductions of expenditure without checking the natural growth of the country (as I trust we may do); we might even go further, in our zeal to make two ends meet, on the short-sighted and usually short-lived course of blind reduction without regard to circumstances, but, as long as the currency difficulty remains unmet, and the chasm of depreciation yawns before us, all such attempts to rectify the finances must be futile, and like tinkering the sides of a kettle when the bottom is out. This is obviously not the occasion for me to pursue this matter further or in detail. I will only say, and here, as in the foregoing remarks on the subject, I offer my personal opinion only, that I deem the only effective remedy to be the adhesion of India, at least, upon terms which it would not be difficult to adjust, to a Bimetallic Union comprising most, if not quite all, of the nations which were represented at the Paris Conference of 1881. By such means alone can we hope to afford to the unfortunate receivers of fixed incomes, to whatever class they belong, the relief which is their due, or to establish our finances on a sound basis.'

The Hon'ble PEARI MOHAN MUKERJI said :—" With Your Excellency's permission I wish to point out, with reference to what has fallen from the Hon'ble the Financial Member, that I did not say that the imposition of the tax should be postponed to next year, but that the consideration of the question whether that imposition should be made permanent should be put off till next year. I am not sorry that my Babu English has caused this mistake, for it has given the Financial Member an opportunity to treat the Council to a well-turned repartee.'

His Excellency THE PRESIDENT said :—" Before putting the question I may be permitted to express the very great satisfaction I have derived from the generous unanimity with which the various members of this Council have expressed their approval of the measure placed before them. Quite independent of those who are connected with the Government, we have amongst us representatives of the three most important interests in India affected by the present Bill. We have a most distinguished representative of the mercantile interests, to whose incisive and weighty speech we have all listened with the greatest pleasure and profit. We have an equally distinguished representative of the interests of the learned professions, and we have also amongst us two gentlemen who are exceptionally authorised to speak on behalf of the Native community. When, therefore, we find that the representatives of these three interests have been good enough to acquiesce in a measure which the Government have introduced with a considerable amount of anxiety and reluctance, we may well congratulate ourselves upon the result. But there is another view in which I personally may be permitted to regard this question, and which gives me even greater satisfaction than that which I have derived from the consciousness that a measure of the Government has been unanimously approved by this Council. As the representative of the Queen-Empress, and as in some respects the spokesman of the British people, I cannot but consider that the unity of the effort, which we have agreed to make in common for the protection and the defence of the Indian Empire, is a better proof and test than any that could be produced of the solidarity of the interests which unite Her Majesty's Native and British subjects in one common feeling of loyalty towards Her Majesty's person and Her Empire. And let me assure those gentlemen who represent so ably Native interests in this country that the manner in which the Native community has stepped forth so loyally and patriotically to the support of the policy of the Government on this occasion, will not fail to be appreciated at its true value by their fellow subjects at home."

The Motion was put and agreed to.

The Council adjourned to Friday, the 22nd January 1886.

FORT WILLIAM;
The 15th January 1886.

S. HARVEY JAMES,
Officiating Secy. to the Govt. of India
Legislative Department.

S. G. P. I.—No. 453 L. D.—26-4-12—50—C. J. D.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 22nd January, 1886.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding.*

The Hon'ble C. P. Ilbert, C.S.I., C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble H. J. Reynolds, C.S.I.

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

The Hon'ble Peári Mohan Mukerji.

The Hon'ble H. St.A. Goodrich.

The Hon'ble J. W. Quinton.

The Hon'ble R. Steel.

The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

LICENSE-TAX AMENDMENT BILL.

The Hon'ble SIR A. COLVIN presented the Report of the Select Committee on the Bill for imposing a tax on income derived from sources other than agriculture. He said:—"I wish to ask to be allowed to explain in a few words the object we had in view in directing the Select Committee to report in the brief time prescribed for it. Previous experience has shown that it is very necessary that a Bill of this nature should be passed into law in time to enable the Local Governments to take measures for the preparation of schedules of assessment and to commence the other necessary inquiries before the beginning of the financial year in which the Act is to be brought into operation; as well as to allow of this Government preparing the rules which have to be drawn up under the Bill, when made law. Hitherto, owing to neglect of this precaution and to consequent delay in the time of passing the Act, there has arisen considerable inconvenience, and it has always been pressed upon the attention of the Government of India that whenever occasion arose for introducing an Income-tax Act the Local Governments should have ample time given to them, in the interests of

the persons assessed, as well as in the interests of the administration, to make all necessary preliminary arrangements in connection with it.

"I may also add that on previous occasions the procedure now followed in regard to the passing of this measure has invariably been adopted, and that Bills of this nature have been passed through the Council with the least possible delay."

NORTHERN INDIA FERRIES ACT, 1878, AMENDMENT BILL.

The Hon'ble MR. HOPE presented the Report of the Select Committee on the Bill to amend the Northern India Ferries Act, 1878.

INDIAN CONTRACT ACT, 1872, AMENDMENT BILL.

The Hon'ble MR. ILBERT presented the Report of the Select Committee on the Bill to amend section 265 of the Indian Contract Act, 1872.

MIRZAPUR STONE MAHÁL BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to declare and amend the law relating to the Stone Mahál in the District of Mirzapur in the North-Western Provinces.

The Council adjourned to Friday, the 29th January, 1886.

FORT WILLIAM;
The 26th January, 1886.

S. HARVEY JAMES,
Officiating Secy. to the Govt. of India,
Legislative Department.

Government of India Central Printing Office.—No. 494 L. D.—26-1-86—308.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vict., cap. 67.

The Council met at Government House on Friday, the 29th January, 1886.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, G.C.B., C.I.E., V.C., R.A.

The Hon'ble C. P. Ilbert, C.S.I., C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

Major-General the Hon'ble T. E. Hughes, R.A.

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

The Hon'ble Peári Mohan Mukerji.

The Hon'ble H. St. A. Goodrich.

The Hon'ble G. H. P. Evans.

The Hon'ble J. W. Quinton.

The Hon'ble R. Steel.

The Hon'ble Amir-ud-dowlah Saeed-ul-mulk Rajah Mohamed Ameer Hosan Khán Bahádur Mumtaz Jung.

The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

LICENSE-TAX AMENDMENT BILL.

The Hon'ble SIR A. COLVIN moved that the Report of the Select Committee on the Bill for imposing a tax on income derived from sources other than agriculture be taken into consideration. He said:—

"The Report of the Select Committee has been for a week before the public, and I observe from the comments in the newspapers and elsewhere that the provisions of the Bill as now modified have been generally taken into consideration. The Report enters fully into the modifications proposed by the Committee, and it is, I think, unnecessary that I should take up the time of the Council without sufficient reason, by going over ground which has already been thoroughly traversed in the Report. I will therefore now limit myself

to drawing attention briefly to the principal points in which the Committee has modified the provisions of the Bill. First, in the third clause of section 5 we have provided an exemption with regard to the houses of persons occupied in the pursuit of agriculture, so that houses actually in the occupation of landholders or agriculturists in connection with the land which they hold or cultivate, and which is necessary to them in the exercise of their calling, will not be liable to the tax. Secondly, we have exempted any portion, not exceeding one-sixth, of the income of a person liable to the tax, when such portion of his income is devoted to the purpose of securing a deferred annuity or an insurance upon his life, following in this respect the practice in England. The provision making a distinction between the assessable minimum amount of incomes from official salaries and other incomes has also, in deference to the views of the Select Committee, been struck out. There appeared to the Government, as originally advised, sufficient reason for making this distinction, but in view of the general disapproval which has been expressed regarding it, it was thought unwise to retain the provision in the face of the opposition it was likely to meet with. We have also omitted the provision requiring that private employers shall deduct the tax from the salaries paid to their employés. We found that great objection was taken to this provision by the mercantile community and other classes of employers, who represented that there would be considerable difficulty in practice in carrying it out, and that it would impose upon them much annoyance and inconvenience, while at the same time they expressed their perfect willingness to submit lists of their employés and of the salaries paid to them, so as to facilitate as much as possible the assessments of their incomes. Here, again, we were able, while retaining an option in the matter, where it could be worked by mutual agreement, to meet the wishes of the Select Committee. With regard to the taxation of shipping companies, it was represented by the Hon'ble Mr. Steel that the carrying out of that provision of the Bill was impracticable, that it never had worked in practice, and that its retention would only lead to a great deal of annoyance without any good result. We assured ourselves that it never had worked, that we had on previous occasions got nothing from it, and we satisfied ourselves of the force of the objections raised as to its impracticability. We felt ourselves the more bound to give our respectful attention to the objections and remonstrances urged on us in this respect, inasmuch as they came from a quarter whence great support and assistance had been afforded us, so that we could rest fully assured that the criticism was made in no captious or idle spirit. Our hon'ble colleague Mr. Steel, speaking on behalf of the community whom he represents, advised us that

while they were anxious to support the measure now before us as a whole, on this particular point we were, they thought, in error; and that were the section retained in the Bill great annoyance would probably be caused to shipping agents without any prospect whatever of advantage to the Government. We have accordingly altered the draft Bill to obviate this objection. The only other provision to which I consider it necessary to draw the attention of the Council is that which relates to appeals from assessments made under the Act. Under the original draft of the Bill no appeal was allowed from any assessment, but the Commissioner of the division might at his discretion entertain an appeal in any case in which he thought fit to do so. But it was pointed out to us that, with regard to assessments upon the larger incomes, it would certainly prove inconvenient not to allow an appeal; it was admitted that in the smaller assessments an unlimited right of appeal was objectionable, because experience had proved it to be of no practical utility; but in the case of the larger incomes it was represented that appeals must, from the nature of the case, be comparatively few, while, on the other hand, there could be brought before the appellate authority, in such cases, materials and data in support of the appeal which were not possible in the case of assessments for the less important amounts. As the main object in originally drafting the Bill had been to prevent the accumulation of a large mass of appeals against small assessments, submitted rather *pro formâ* than because the appellant was in a position to urge anything in the form of proof, or the appellate authority in a position to exercise a sounder judgment than the officer assessing, we were prepared to meet the objection urged on us by enacting that an appeal should be allowed on the larger assessments, while, in regard to other assessments, we retained the provisions of the License-tax Acts, which have been found to work satisfactorily. We have accordingly modified the provision so as to admit of the revision upon appeal of assessments amounting to Rs. 250 and upwards. I think these remarks will suffice to draw attention to the points of main importance in the Bill as it has been amended by the Select Committee."

The Hon'ble MR. STEEL said :—" I cannot allow this opportunity to pass without expressing the obligations which are due to the hon'ble member in charge of this Bill for the fair and reasonable spirit in which he has carried it through the Select Committee. Some of its provisions were of a nature which might have occasioned much irritation if the objections to them had been met in a less conciliatory manner. The hon'ble member has described the changes which have been made in the Bill. The special exemption of Government servants with salaries under Rs. 100 per month would have

caused jealousy and offence; and, as it appeared to be supported by no sufficient reason, its excision has been a great improvement to the Bill. The Committee have been able to make another change in the Bill which is of considerable importance as satisfying objections from all parts of India. I mean the exclusion of those clauses which were designed to bring under the operation of the Bill shipping owned elsewhere than in British India but trading between foreign countries and Indian ports. The original clauses of the Bill were strenuously opposed by the agents who have charge of such shipping in India. They pointed out the impossibility that any one in India could ascertain or fairly assess the profits made by such shipping; that even the owner in England or elsewhere could make no proper return of the share of his profits liable to taxation, much less the agent in India; that the clauses, if applicable at all, must apply to any vessel touching at an Indian port; that the clause which enabled a Collector to call upon an agent for information which he could not possess was unfair and oppressive. These arguments had due weight with the Committee, who further satisfied themselves that similar clauses in former Acts had been absolutely inoperative and produced no revenue. Under these circumstances the concession made by the Committee has cost nothing to the revenue, while it has relieved ship-agents from the apprehension that some zealous Collector might endeavour to fasten upon them an onerous obligation impossible to be fulfilled. The Hon'ble Mr. Mukerji has given notice of his intention to propose that the duration of the Bill shall be limited to one year. I will not anticipate his remarks, but I will take this opportunity to say that, whatever be the result of his amendment, the payers of income-tax will now fairly claim that under the present Bill they will contribute at least their full share; and, when any remission of taxation is possible, they will expect that their case shall be considered on its merits along with all other claims for relief which may be put forward."

The Hon'ble PEÁRI MOHAN MUKERJI said :—" I only wish to refer to one point, and that is section 29. It will be seen that, unless otherwise provided by the rules to be framed by the Act, the tax will be collected in one instalment for the whole year from all persons except those holding salaried offices under Government or in private employment. I think it will be more equitable to collect the tax by quarterly instalments."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said :—" I have noted, in the remarks which I have appended to the Report of the Select Committee, the subjects upon which I differ from the majority of my colleagues and on which I now wish slightly to touch with the permission of Your Lordship. I think the machinery of the Act, so far as it could be im-

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proved,—and this I speak from my experience of the first Income-tax Act, in the working of which I had the honour to be associated,—has been improved by the Select Committee, guided by the Hon'ble the Financial Member. But when I have said that, I think I have said nearly all that I can say in favour of the present measure. I had wished that the way had been seen to confine its operation to one or two years, and this on grounds already indicated in the remarks which I submitted to the Council on the first occasion; because, if that had been done, the measure would have been received with greater satisfaction by the people, and I should not have said much on this occasion. I think the remarks which were submitted to the Council by the Hon'ble Mr. Hope raised issues which were very wide, and with some of which I do not propose to deal at this stage. In my speech on the last occasion I simply took for granted the necessity of some new tax as pleaded by the Hon'ble the Financial Minister. I think the country is quite ready to meet his views so far. If the money is wanted for one year or two years, there is the Bill. But beyond that, if you seek to make this a permanent Bill, I say it would be going in the teeth of the past history of the country. I think the remarks which have fallen from the Hon'ble Mr. Steel are just in regard to all measures of direct taxation like that now before us. Some Native Chief may have tried to introduce taxation like this; but for all that I do say that it is unsuited to the country. Past history is against it, and I should not like to see the introduction of such a tax as this, because it will introduce two currents of economic life amongst the vast populations of India, and which ought not to exist; and whatever may be the reason for bringing other races and other classes of people under such measures of taxation, I think the Government of India should prefer those broader lines of financial policy on which I hope the Financial Member will always base his work; and I therefore think it will be better to limit the duration of this tax to the necessities of the occasion and not make it a part of the permanent resources of the empire. The allusion which the Hon'ble Mr. Hope made to the opinion of Mr. Gladstone is, I am sorry to say, not quite pertinent, because it did not refer to the duration of the tax; for, after reference to the volumes of Hansard's Debates, hon'ble members will see that it referred to what may be called the cutting up bit by bit of the scheme or a sort of tinkering of an Income-tax Bill. He did not wish it to be tinkered from time to time, but either to be taken as a whole, or abandoned as a whole. That Mr. Gladstone was strongly opposed to such a tax may be gathered from his condemnation of its character; for he expressed in very clear and decided terms his verdict on that occasion, and further he limited the duration of the tax to only seven definite years. The

circumstances and the revenue-systems of England and of India are very different—I may say entirely different. The main sources of our revenue are the land and opium. Into the rest I have no time to go. We had *a* house-tax, and it has been abolished. The Government of India has wisely remitted a very large number of annoying taxes since 1839 and 1844, and imposed others in their places; and I am quite sure that it can rest its action on its broad and equitable foundations; for, at any moment, when the necessity arises, all classes of the people will cheerfully submit to be taxed to the utmost. There is only one point on which I have to make one or two observations in this place, and that is with reference to the tax on houses. The house-tax is well known in this country, but it is not a tax on the income of the house-holder. I say this from my own experience and a knowledge of the past history of this country. But in order to verify my conclusions I have referred to various sources of information during the last week, with reference to the house-tax in British India and some of the principal Native States throughout the country, and I am satisfied that it is a house-tax and nothing more. It is a tax rather on the value of sites, and the incidence of the tax varies in some States like Kolhapur, in the Southern Marátha country, from two annas to five rupees. We were referred to the capitation-tax in Burma. It existed in two towns in 1852, and was abolished by our Government, which enacted a revenue-tax instead and limited it in a careful manner by regulating it according to the size of the site. I do not think therefore—and I say it with very great respect—that we ought to fall back now on the policy of an obsolete Native Prince cited to us as a model by which to guide our measures of taxation. We proceed on entirely different principles. The resources from which we derive our revenue can be examined in the broad light of day by the criticisms of an enlightened public, and I do not think the Government of British India has anything to fear if it follows the broad lines of a definite policy in such matters. I have differed in one or two things from the Hon'ble the Financial Member. I think that on the whole, for an emergency like this, we have struck out a pretty good rough and ready machinery, and I am only sorry that he should not be able to see his way to make this present Bill a limited one—I mean limited in its duration—and perhaps see his way to abolish it altogether."

The Hon'ble SIR A. COLVIN said:—"I am extremely glad to hear from the Hon'ble Mr. Steel that the efforts of the official members of the Government in Select Committee to meet and conciliate the objections brought forward by himself and his colleagues have met with satisfaction. I think it is also due to them to say that in passing this Bill through Select Committee our

own proposals have been met by our colleagues in a similar spirit, and that we have derived from their suggestions the greatest assistance and support. I may, perhaps, be allowed to go further and say that the generous support accorded to the Government in a matter of so delicate a nature, in a burning question of this kind which in former days was the subject of prolonged and bitter controversy, has been to us matter of deep satisfaction; and that the burden laid on me (for no man in my position can propose to increase taxation otherwise than with great reluctance) was greatly lightened when I found that those whom we were compelled to call to our assistance acknowledged the propriety of what we did, and gave us their ungrudging support and assistance in carrying out the measure which we placed before them. Both in the community represented by my hon'ble friend Mr. Steel and in the Native communities represented by my hon'ble friends Bábú Peári Mohan Mukerji and the Hon'ble Rao Saheb Mandlik, I think that it is only right that I should say that our proposals seem to me to have met with a degree of fair and unbiassed consideration which to me has been extremely gratifying. On a point of this sort it is inevitable that differences of opinion must be held and expressed; every man will form his own judgment, and the judgments of many will differ; but the balance of opinion, as far as I have been able to learn, is that the Government is justified in what it has proposed, that the mode in which the measure before us is to be carried out is open to the minimum of objection which can be brought against a measure of this kind, and that our critics, many of whom are called upon in their own persons to contribute, will do so loyally and willingly, if not gladly. With regard to the duration of the tax, the Hon'ble Mr. Steel has put the case in an extremely fair way, namely, that if the Government finds itself in a position to make remissions of revenue hereafter, the question of the income-tax should be put on the same footing and receive the same consideration as any other question of remission of revenue. I quite accept that understanding, and endorse it. With regard to what has been said by the Hon'ble Mr. Mandlik on this point, however, and further as to the propriety of taxing house-property, I will reserve my remarks until the amendments on the point, of which notice has been given by the Hon'ble Peári Mohan Mukerji, are brought forward; but, with regard to section 29, I would point out that the section provides that the tax shall be payable at the time appointed in that behalf in or under this Act, leaving a discretion to the Government in framing the rules to prescribe in what instalments the tax shall be collected, and I may assure my hon'ble friend that this is one of the points which, on framing the rules, will receive the careful attention of the Government."

The Hon'ble MR. HOPE said :—" I had not intended to trouble the Council with any remarks on this occasion, but am obliged to do so as my hon'ble friend Rao Saheb Mandlik has thought fit to refer to what I said on our former discussion as to the propriety of making the tax a permanent one. I regret that the aphorism that 'two of a trade can never agree' should receive a fresh illustration in the fact that the hon'ble member and myself, who both of us, in one sense or another, may be taken to be representatives of the Western Presidency, are at issue on some points relating to the legislation before us. The hon'ble member has been so good as to consider that my reference to Mr. Gladstone was not pertinent, because Mr. Gladstone, in the very debate from which I quoted his remarks, ended by advocating the duration of the tax for seven years only. I need scarcely say that, in a matter of that kind, I should be the last to pick out a particular sentence or particular view of any great statesman without considering his opinion as a whole. But I think it will be sufficient on the present occasion to say that, although Mr. Gladstone on that occasion advocated the passing of that measure for only seven years, just as Mr. Wilson in this Council advocated its operation for only five years when he first brought an income-tax into the financial system of the country, Mr. Gladstone has now found, by the operation of experience, that the expectation that the income-tax would be a temporary measure has been delusive; and therefore, in advocating the permanent incorporation of direct taxation into the financial system of this country, I may say that I am only following in the footsteps of that great financier whom my hon'ble friend and I myself both agree in respecting. Another point to which I shall briefly allude is that we cannot at the present day draw any profit from the example of what my friend called obsolete Indian Princes. I am very much surprised to hear that Indian Princes are considered to be obsolete."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK begged to explain that he had said "an obsolete Indian Prince."

The Hon'ble MR. HOPE continued :—" I am much obliged for the correction. But still, I am afraid that if such a remark had fallen from His Excellency the Viceroy, or from one of the Members of the Government in this Council, it might have been held to be of the very gravest political importance. I trust that it does not portend evil to the Princes of India in the event of our native friends acquiring that larger share in the government of this country which they are so anxious to obtain. To pass to a more serious vein, I may point out why I laid stress on the fact that Native Princes of the present day are at the present moment levying taxation of this particular description. We do hear on various occasions of the oppression and abuses in their revenue-

systems, but as to direct taxation, though I have had considerable experience in Native States, I do not recollect a single case of the failure of their system, and it was in view of that fact I stated that their system of direct taxation was worthy of our imitation."

The Motion was put and agreed to.

The Hon'ble PEÁRI MOHAN MUKERJI moved that the words "and in each subsequent year" in section 4 be omitted. He said :—"The Hon'ble the Financial Member told the Council when introducing the Bill that the proposed imposition was necessary to meet an extraordinary emergency, and that 'there was but one year to be tided over'. I fail therefore to see the necessity of giving a permanent character to a measure of taxation which, in spite of the soundness of its principle, is very unpopular in this country by reason of its attendant evils. The necessity of limiting the duration of the measure is the greater, as the announcement of Your Excellency's intention to appoint a Financial Commission has led the country to hope that several important questions connected with Indian finance would ere long be carefully sifted and satisfactorily settled. There can be no reasonable objection to a fiscal measure which seeks to make capitalists, professional gentlemen, gentlemen in the public and private services and tradespeople contribute their fair share of the cost of the administration; but I humbly submit that it is wholly premature to declare at present that an income-tax should be levied in the proposed form and at the proposed rate for all time to come, when we have every expectation that, before the ensuing year comes to an end, the proposed Commission will have been enabled to show considerable gain by retrenchment of expenditure, by re-adjustment of Provincial contracts, and perhaps also by a revision of the import-duties. The Hon'ble the Financial Member has very clearly pointed out that, if all direct taxation were abolished, the abolition of the cesses on land should follow as a matter of simple justice. Following up that reasoning, what justification, I ask, can there be for levying a cess of more than three per cent. from the poorest cultivator in the country and exempting from all direct taxation the trader or the moneylender who earns Rs. 499 a year? The enquiries which Your Excellency purposes to institute will enable Your Excellency's Government at the end of a year to enact a more equitable measure of taxation—one which will press equally on all classes of the community, excepting such as are too poor to bear the burden of direct taxation."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said :—"My Lord, my remarks on this Motion will be brief. I know that I am in a very

small minority, but I wish to support the Motion of my hon'ble friend, first because I have some remarks to make, but secondly and principally because it affords to me an opportunity of giving a personal explanation which otherwise, by the rules of this Council, I shall not be able to give. The Hon'ble Mr. Hope has advocated the linking together of two systems of taxation which are inconsistent with each other: the British system is entirely different from that under the Native Princes. A comparison is thus instituted between two incommensurable quantities. There are many excellent Native Princes who do not require any certificate from me. There are others whose own deeds will duly expose them if they are bad; and they will suffer. But this is not the time nor the place to discuss the merits or demerits of the revenue-systems of the Native States, and I deprecated such discussion in the few observations I submitted to this Council. That I honour Mr. Gladstone is not a new thing. About his merits all are agreed. I know he has not been able to repeal the income-tax in 1860, but the income-tax in England (so far as I have been able to verify my references in Hansard) is brought forward before the House of Commons, speaking generally, *pro formâ* (if one likes to say so); and it is annually voted upon; so that the analogy of the English practice does not help us here in the least. As regards Mr. Gladstone's opinion about the income-tax, it is decisive. He says on the same occasion as follows:—

'The public feeling of its inequality is a fact most important in itself. The inquisition it entails is a most serious disadvantage. And the frauds to which it leads are an evil which it is not possible to characterise in terms too strong.'

"With this opinion before me and with the evidence before this Council, and before the Committees of the House of Commons on Indian finance in 1871, 1872 and 1873, I take leave to say that, whilst I shall heartily support a measure which is required by the Government of India for its administration, as the Financial Member now says it is, for a limited period, I shall not be a party to support the proposal for a permanent Act on grounds which will not bear examination; and it is in this view that I said *the* antiquated Prince, and in saying so I meant no slur on him or on any Prince whatever. I am quite prepared to do as I would be done by; and I think I could not place a higher standard of examination or criticism, before this Council, of any question whatsoever."

The Hon'ble SIR A. COLVIN said:—"The hon'ble mover of the amendment has reminded me that in the speech I made when asking for leave to introduce this Bill I said that a year had to be tided over, and he has drawn from that the inference that if the ensuing year is tided over we shall have no further financial difficulties. I think he will see, if he refers to my speech,

that when I made that statement I was speaking with special reference to the question of interference during their currency with the Provincial contracts. I had said that we had an extraordinary charge put upon us in connection with the measures for the defence of the country and the depreciation in the value of silver, part of which only would fall on us in the ensuing year. I added that in the ensuing year, for the reasons given, to touch the Provincial contracts was undesirable; but I was careful to add that the charges connected with the defence of the country would not reach their maximum in 1886-87, and that, whatever more we may hereafter require, we must in the ensuing year have about £700,000 from this tax. I was careful to say that we might hereafter want more; we should certainly not want less. I thought I had explained sufficiently that I was far from saying that our necessities would probably be limited to the term of one calendar year, but, on the contrary, that we are compelled to incur expenditure arising from difficulties more especially connected with silver, the duration of which we are not at present in a position to define, and that against those growing difficulties might be set any further increase to our revenues at the revision of the Provincial contracts, which it would be premature, for the reasons I gave, to touch at present. My hon'ble friend has proposed that the duration of the tax shall be limited to one year and not to all time to come. If, on the one hand, I have refrained from proposing that the tax should be of an age, and not for all time, on the other, I have certainly never dreamed of proposing that any tax shall be levied for all time to come—for the limitless hereafter. All that we can say, looking at the situation before us, is that on the horizon which can be covered by our eyes there does not appear that little cloud of relief to which my hon'ble friend is impatient to draw attention. Further I cannot go. There are, as is well known, very valid objections to introducing a measure of this sort for the limited term of one year. In the course of the caution which fell from the Hon'ble Mr. Evans as to watching carefully the machinery for assessing the tax, amongst other things he drew attention to the necessity for regularity in the order and mode of assessment, regularity in the necessity of which we completely concur, but which can only be attained by applying the same precautions and reasonable prospect of continuity in assessing this tax as are taken in respect of other measures for raising revenue. My hon'ble friend the mover of the amendment has made a comparison between the cess of three per cent. paid by the poorest cultivator and the exemption from all taxation of the trader or money-lender who earned Rs. 499 per annum. I do not know whether in doing so it is his object to do away with this exemption, but in any case, the cultivator, I may remind him, pays his cess on his rent,

not on his income. Speaking broadly, though not on that account inaccurately, I should say that the equivalent of what the cultivator pays as local rating in the form of cesses on his land is paid by the small tradesman in the form of municipal taxation or some local impost, and that in practice the one may be taken to balance the other. The man who is not assessed to the income-tax pays in either case in the form of a cess or of other local rate, or of a municipal tax. I do not think I have to say anything further with regard to this special amendment. I may repeat that our necessities are not bounded by the year immediately before us, and it is very desirable that we should do nothing to interfere with the regular and careful introduction of the Act, which will certainly be prejudiced if we were to let it be thought that it will be abandoned at the end of the year. To subject the whole community periodically to convulsion is obviously undesirable, and it is therefore objectionable to keep open the discussion and agitation as to the principles and merits of direct and indirect taxation by annually coming to this Council Chamber for the passing of a new Bill. Believing that there is no immediate probability of lightening the burden of taxation, I am strongly of opinion that on the ground of the public convenience it is undesirable to put any limitation of time to the operation of this Bill. I have only to add with reference to the allusion which has been made to the possible revision of the import-duties by the Committee which will be convened for the consideration of economies, that the proposed Committee will be a Committee to enquire into the possibility of diminishing expenditure, not of raising income; it will be a Committee to devise economies, not to advise upon financial policy. It is to be a special Committee of enquiry into expenditure, not of finance in its larger sense: and I judge it necessary to say this here, as, from his remarks, I gather that my hon'ble friend has somewhat misinterpreted the intention of Government in nominating a Committee."

The Hon'ble PEÁRI MOHAN MUKERJI said :—" I wish to point out that the cesses on land are in no way equivalent to the municipal taxes paid in towns. Even in rural villages the people have to pay the chaukidári-tax and other taxes which are equivalent to municipal taxes. The cesses on land are, properly speaking, direct taxes on income; and if the proposed tax is to be perpetuated it will perpetuate the existence of at least two unequal taxes in the country. What I submit is that, after the matter has been closely examined by the Commission, let there be a uniform and equitable tax throughout the country, and not different taxes affecting different classes of the community."

The Motion was put and negatived.

The Hon'ble PEÁRI MOHAN MUKERJI also moved that for the words "five hundred" in section 5, clause (*j*), the words "one thousand" be substituted. He said :—"In moving this amendment I do not forget that, while the lowest taxable income in England is £150, the cost of living there is three times as great as it is in this country, and that a maximum of exemption fixed in this country at Rs. 500 is, therefore, a just limit according to the English standard of taxation. If I could be sure that no person whose income is less than Rs. 500 would be placed under the operation of the measure, I should have no cause of complaint. But considering the position and character of the people, considering how powerless they are to resist an unjust assessment, and how a maximum limit of Rs. 500 reduces itself in practical operation to a limit of Rs. 200 or Rs. 300, I venture to hope that this Hon'ble Council will see the necessity of raising the minimum of taxable income to Rs. 1,000. I have no data before me enabling me to inform the Council what difference the proposed amendment will make in the aggregate outturn of the measure; but if it be deemed desirable that the tax-collector should not visit the houses of those who are unable to assert their rights and who can secure just exemption from taxation only at a heavy price, and that inquisition should be avoided at any cost, I submit that the minimum limit of taxable income should be raised to Rs. 1,000."

The Hon'ble SIR A. COLVIN said :—"In regard to this amendment I do not think it will be necessary for me to detain the Council very long. But I may recall one consideration which may tend to mitigate to some extent the apprehension, which the hon'ble member feels, that persons whose incomes are less than Rs. 500 a year may run the risk of being assessed. I may, perhaps, be allowed to point out, in passing, that the difference between Rs. 500 and Rs. 1,000 is pretty large, and the precaution which the proposed amendment aims at is perhaps a little excessive if the object of my hon'ble friend is merely to prevent the inclusion in the registers of any person who should not be assessed at all. But, however this may be, the consideration to which I have referred will be found in the expression used by Your Lordship in the opening of these debates when it was said that what we are engaged in doing was in adding an upper storey to a building which had been already commenced. Incomes between Rs. 500 and Rs. 1,000 with rare exceptions have for the last eight years been assessed under the license-tax. The lower storey will remain very much as we found it. There will be some re-adjustment of the rate of assessment between Rs. 500 and Rs. 1,000, which will be caused by certain changes and modifications we have made with the object, in the case of these

incomes, of giving greater relief. But I should imagine that during the last eight years men whose incomes are between Rs. 500 and Rs. 1,000 and who have been placed on the register will find the chance of their assessments being increased very limited; while those whose incomes are less than Rs. 500 have, it may be reasonably supposed, during the past eight years, been determined. All that we are doing with the lower storey is to open out a fresh door by which persons following certain other professions may be admitted, but with the great mass who have already tenanted it, or with those for whom it does not profess to find accommodation, we have practically no concern. Our object, moreover, in the introduction of the present Bill is to bring in a larger income, and it would therefore need stronger reasons than that urged by my hon'ble friend to cause us to raise the assessable minimum. By doing so we should find ourselves practically cutting off at one end what we added at the other, and we should suffer proportionately. I cannot at present say precisely what the precise result would be to the yield of our proposed measure were we to adopt the amendment, but it would be considerable. I can assure my hon'ble friend, however, that so long as I have the honour to preside over the Financial Department, under whose auspices the proposed income-tax will be worked, my attention will be given to the working of the Act, so as, as far as possible, to prevent its operating with injustice or hardship on the smaller incomes, and the classes of assessees the least capable of looking after themselves, classes for whom, if he will believe me, I can assure him I have as much sympathy as my hon'ble friend himself."

The Motion was put and negatived.

The Hon'ble PEÁRI MOHAN MUKERJI also moved that section 24 be omitted. He said :—" The income which owners of buildings in a city or village derive by letting the buildings on hire will come under assessment under Part IV of the second schedule. To this provision I have no objection. But section 24 refers only to houses which are not let on hire and which are occupied by the owners themselves. It seeks to impose a tax not on an income actually derived but on an imaginary income which could be derived if the houses were let on hire. I confess I fail to appreciate the reasoning on which this provision is based. Buildings used by their owners as dwelling-houses yield no income whatever. In the case of poor descendants of families who were once rich, they do not afford even a criterion of the means of the occupiers. A provision to tax such buildings as sources of income is wholly incomprehensible to a community among whom living in one's own house is the general rule and living in hired houses a rare exception. On the same reasoning might a demand

be made for income-tax upon owners of steamboats, carriages and horses, of jewels and of other personal property capable of yielding income if let on hire. Apart, however, from the question of principle, the assessment of houses presents practical difficulties of no ordinary character. In most places there is no standard for determining the annual value of houses, and the assessments must, therefore, be most arbitrarily made. People will be subjected to no end of inquisition, hardship and harassment. The Cess Act of 1871 provided for the assessment of houses outside the limits of municipalities, but the work was found to be attended with so much difficulty to the assessor and oppression to the assessee that it was given up in despair. The amount assessed in these provinces in 1873-74 was Rs. 66,342, but it was at a cost of Rs. 66,942. In 1876 District-officers were requested to exercise their direct supervision in the work of assessment, because, observed the Bengal Government, 'left to the working of panchâyats and underlings, it may be a great oppression to the people, while the present results are anything but satisfactory.' In 1877 the Bengal Government observed in their Administration Report, 'the house-cess is not, however, suited to the circumstances of the country, and its abolition is contemplated.' When we have found it desirable to encourage thrift by exempting from taxation portions of salaries paid for securing deferred annuities, and to exempt owners of seagoing vessels by reason of the difficulty of the assessment of their profits, which are presumably enormous, and with reference to which, by the way, the Madras Chamber of Commerce, after pointing out the difficulty of assessment, claimed only allowances for losses incurred on some voyages, I fail to see the justice of bringing under the operation of the Act a description of property which yields no income to the owner and the assessment of which must necessarily be oppressive and inequitable. I submit, my Lord, that every argument bearing upon the question points to the justice and expediency of exempting from taxation all houses not let on hire."

The Hon'ble Mr. Evans said :—" I wish to say one word on this amendment. I do not agree with the hon'ble member who has just spoken on the principle of the amendment, but there is no doubt some force in what he said in regard to the immense difficulty of assessing Hindu family dwelling-houses. So great was the difficulty felt in Calcutta that the Municipality, having found it impossible to ascertain what such houses would let for, have actually insisted on assessing the rate at a percentage on the cost of the building, seeing that they could not do it in any other way. They had been pulled up by the High Court for going beyond their powers, although there is no appeal from anything done under the Act. It will be for the Hon'ble the Financial Member

to consider what instructions he should give regarding the assessment of such houses in villages for which tenants cannot be found at any price; and as to which it will be very difficult to find the value at which they may be reasonably expected to let."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said:—"My Lord, in my dissent recorded at the foot of the Select Committee's Report, I had objected to the application of this section except to large towns. I have since made particular inquiries, and I think some of the grounds which my hon'ble friend Bábú Peári Mohan has urged are applicable even to very large towns, such as Puna for instance. There are in such towns large buildings which have cost thousands and even lákhs, and which can be had, some of them, for Rs. 30 or 40 a month. If the first cost of a building is to be taken as a measure for taxation, the new tax will be simply ruinous. Seeing that, in municipalities, taxation is already at too high a figure (something over five crores is, I believe, the total of municipal and local taxation in 1882-83), I think it is very desirable, if the Hon'ble the Financial Member can see his way to do so, to omit this clause altogether, as he has already done in the case of agricultural buildings and the houses of landholders and tenants. And seeing that house-property is already taxed in Bombay at Rs. 15-12 per cent., and under the Calcutta Municipal Act of 1876 the maximum rates amount to 21 per cent., I think it very desirable that the Financial Department should act on the principle, already recognized in this Bill, that when a man is once taxed he should not be subjected to another tax in the same capacity."

The Hon'ble SIR A. COLVIN said:—"The section to which my hon'ble friend, the mover of the amendment, has taken objection is no new section. It has found its place in all preceding Bills of this kind, and the principle of rating which has been adopted is the principle prevailing in England, and hitherto recognized in India; so that we have in our favour every precedent, as far as I know, without exception. And in spite of what my hon'ble friend has said I can see no reason for not levying a tax upon the assumed rental of houses occupied by their owners, which appear to me as liable to assessment as incomes derived from any other form of property. If a man invests his capital in house-property, I fail to see why, though he occupy such house himself, the income which he derives, indirectly though it may appear to be, from his investment, should not be subjected to assessment. The Hon'ble Mr. Evans has taken exception to the difficulty of assessing a particular kind of house-property. That appears to me a fair point to bring home to the Government,

and it will receive careful consideration in framing the rules. I have not the least doubt that His Honour the Lieutenant-Governor will give this point his careful consideration. But, although there may be some difficulty in working the rules, I do not think we shall be justified in adding another exemption to those already contained in the Bill. Where a rule of assessment is impracticable, and has, as in the shipping case just referred to, been proved impracticable, we may well be expected to abandon it; but a mere difficulty of working must be met, not by exemption, but by care in administration. If the difficulty alluded to by my hon'ble friend Mr. Evans is connected with the joint property of zamíndárs living upon their estates, such property is expressly exempted under the Bill, inasmuch as it is a building which the receiver of rent by reason of his connection with the land requires as a dwelling-house."

[The Hon'ble MR. EVANS—" I do not mean the dwelling-houses of zamíndárs, but of mahájans."]

The Hon'ble SIR A. COLVIN continued:—" Then the difficulty must be provided for in the rules, and we have to thank our hon'ble colleague for having warned us of it. As to the exemption asked for, in spite of the experiences quoted by my hon'ble friend the mover, which do not refer to measures similar to that now before us, but to a local law, with the working of which I may admit I am not familiar, in spite I say of experiences which seem to me to refer to other circumstances and to be not very much to the point, in view of the experience gained from other parts of India, we should certainly not be justified in making the exemption asked for. I have never hitherto heard that in Bengal the former Income-tax Acts were worked so objectionably under this head as to demand exemption of houses occupied by their owners. From other provinces no complaints were made. It is matter, not of principle, but of practice. The ascertainment of the letting value is matter for the rules to be made under the Act, but I cannot admit that this class of houses is to be assumed, for the purposes of the proposed Act, to have no letting value at all. We have universal precedent both in England and in India in regard to the assessment of house-property; while here in India, in the hitherto working of measures of this nature, this has not been a difficulty brought to our notice as in any way demanding exemption. So far as difficulties of assessment are concerned, the objection is one which requires our attention, and in framing the rules great care will be taken to avoid the injustice and annoyance which the hon'ble member anticipates."

The Motion was put and negatived.

The Hon'ble SIR A. COLVIN then moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

NORTHERN INDIA FERRIES ACT, 1878, AMENDMENT BILL.

The Hon'ble MR. HOPE moved that the Report of the Select Committee on the Bill to amend the Northern India Ferries Act, 1878, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. HOPE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

INDIAN CONTRACT ACT, 1872, SECTION 265, AMENDMENT BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to amend section 265 of the Indian Contract Act, 1872, be taken into consideration. He said :—" This is a Bill to amend a section of the Contract Act which has given the Courts a good deal of trouble. It relates to the winding-up of the business of a firm after the termination of the partnership. The authorities whom we have consulted are by no means in accord as to the precise form which the amendment should assume, but the Select Committee came to the conclusion that there are practically only two alternatives—either to repeal the section altogether as out of place in an Act which professes to deal with substantive law and not with procedure, or to recast it in such a way as to bring it into conformity with one of the forms of plaint in the Civil Procedure Code. We have preferred the latter alternative as less likely to cause misconception than mere repeal."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

MIRZAPUR STONE MAHÁL BILL.

The Hon'ble MR. ILBERT also moved that the Report of the Select Com-

mittee on the Bill to declare and amend the law relating to the Stone Mahál in the District of Mirzapur in the North-Western Provinces be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

INDIAN SECURITIES BILL.

The Hon'ble SIR A. COLVIN moved for leave to introduce a Bill to amend the law relating to Government Securities. He said:—"In the Report submitted in October last by the Select Committee on the Bill which became Act XIX of 1885, it was stated that the question of applying the rule of survivorship to Government securities issued after as well as before the first day of April, 1886, would be further considered during the Calcutta session. The question has now been fully discussed, and the Government of India has decided to propose the maintenance of the rule of survivorship which has hitherto obtained. Effect will be given to this decision by the repeal of the words in section 3, sub-section (*1*), Act XIX of 1885, which restrict the operation of that section to Government securities issued before the first day of April, 1886.

"By sections 4 and 5 it is proposed to introduce into the law relating to Government securities provisions enabling holders for the time being of public offices to hold those securities, and prohibiting the making of indorsements on allonges annexed to them.

"Section 4 of the Bill, in providing that Government securities may be made and indorsed payable to the holder for the time being of an office, follows the English Bills of Exchange Act, and will put an end to the public inconvenience which is caused by the present uncertainty as to the state of the law in India.

"As regards section 5, the risk of fraud which attends the practice of writing indorsements upon allonges is held to justify the prohibition of annexing them to instruments which, like Government securities, are readily renewable.

"The last section of the Bill merely empowers the Governor General in Council to make authoritative rules for the maintenance of existing practice with respect to the record and acknowledgment of payment of interest and to the renewal of securities which have become covered with indorsements."

The Motion was put and agreed to.

OUDH RENT BILL.

The Hon'ble MR. QUINTON moved for leave to introduce a Bill to consolidate and amend the law relating to rent in Oudh. He said :—

"Nearly 18 years have elapsed since the Oudh Rent Act was passed, and it may be well that I should recall to the recollection of this Council the circumstances under which it was carried before I state the provisions of it which in the opinion of the Local Government and the Government of India now call for amendment. The passing of the Act was the final step in a long controversy which had raged in and out of the province for several years previously. It gave legal effect to certain concessions mutually made by the parties to that dispute. It granted hereditary rights of occupancy on beneficial terms to an ex-proprietary body,—tillers of the lands once owned by themselves or by their ancestors,—and it left the remaining tenants throughout Oudh in the position of tenants-at-will, liable to pay such rent as their landlords might demand, and subject to ejectment from their holdings on a month's notice.

"The Government of the day had scanty materials by which to judge of the probable effects of these provisions. There had been no regular census of the population, and the regular settlements of the Province were still being made. It was understood, however, by the Government of India that the provisions respecting tenants with a right of occupancy would embrace in their aggregate a large body of the cultivators of the Province, and of those classes especially which claim most strongly the sympathy and interest of the British Government. The harshness of the provisions respecting tenants other than those possessed of rights of occupancy was believed to be more apparent than real, inasmuch as the Chief Commissioner so late as 1865 had put on record that in three-fourths of Oudh there was a deficiency of cultivators, that they were so valuable that no landlord would seek to get rid of a good one, and that even in parts where population is more abundant no symptom that the cultivators needed protection had then been manifested. Further, the Act purported to extend a certain amount of protection to every improving

tenant by giving him a right to compensation for his outlay on improvements whenever his rent was enhanced or when he was evicted from his holding—a statutory right then novel in this country, and lastly, the terms of the taluqdárs' sanad or written grants of their estates were supposed to furnish a sufficient guarantee against oppressive treatment of tenants in taluqdárí estates.

"I may remind the Council that all proprietary rights in the soil of Oudh were confiscated by a proclamation of Lord Canning after the mutiny, and that their estates were granted to the taluqdárs afresh on certain conditions; among them the following:—

'It is also a condition of this grant that you will, so far as is in your power, promote the agricultural prosperity of your estate,' and 'as long as the above conditions are observed by you and your heirs in good faith, so long will the British Government maintain you and your heirs as proprietors of the abovementioned estate.'

"These conditions, in the opinion of Sir Charles Wingfield, the most staunch supporter of the rights of the taluqdárs, would of themselves furnish the Government with a warrant for stepping in to prevent oppression of their cultivators by taluqdárí landlords.

"So much as to the provisions of the law as it stands, and as to the beliefs and intentions of those who framed it respecting its probable effects. I now proceed to show how far the working of the law has accorded with these expectations. For this, materials are not wanting. The last census, which was taken in 1881, gives full statistics respecting the agricultural classes of Oudh. The Rent Act authorizes the issue of notices of ejectment, through the agency of the revenue-offices, and the great increase in the number of these, which rose by rapid jumps from 23,600 in 1876 to 90,200 in 1882, attracted some years ago the attention of the Chief Commissioner and the Government of India. Enquiries were from time to time instituted which led to no very definite result. During the course of one of these enquiries a case came to light in which Sir George Couper had felt it necessary to interfere, in the terms of the sanad, to check what appeared to be harsh and unjustifiable raising of rents in the case of one particular estate; but on re-consideration there seemed to be room for condoning the error and restoring the taluqdár to his possessory management.

"The case, however, disclosed circumstances which, being acknowledged to be not uncommon in Oudh, necessitated a comprehensive enquiry into the general condition of the tenantry throughout the Province, which was accordingly ordered by the Government of India. The method of enquiry was that in each district 50 or 60 villages should be selected which should include ex-

amples of the principal forms of tenure. Each village was to be visited by the Deputy Commissioner or an Assistant not below the grade of Extra Assistant Commissioner, and, with the help of the rent-rolls filed at settlement and since, an exhaustive examination was to be made of the changes in rental and occupation which occurred in the 12 or 15 years since the settlements were made. To secure uniformity and thoroughness in the investigations, Major Erskine, Commissioner of Sitapur, an officer of great revenue experience in Oudh, was appointed Special Commissioner to supervise the operations. The enquiries were carried out on the plan prescribed in the cold weather of 1882-83, and in June, 1883, Major Erskine submitted the proceedings of the District-officers, together with proposals for the amendment of the law, framed by him after consultation with all classes interested, in a very thoughtful, able and lucid report, which has elicited the commendation of the Lieutenant-Governor, the Government of India and the Secretary of State. The district reports had also been submitted to the consideration of a Committee assembled at Lucknow of which Mr. J. B. Lyall, then Financial Commissioner of the Punjab, now Resident of Mysore, was president, and Mr. W. C. Benett, Director of Agriculture and Commerce in the North-Western Provinces, a member; and both these officers, who are, I need scarcely observe, specially qualified to discuss the subject, have left on record valuable notes respecting it.

"Major Erskine's proposals have since been under the consideration of the Governments in India and at Home, and it is on them that the provisions of the Bill which I am asking leave to introduce are mainly based.

"It will be sufficient for the present occasion if I give briefly the results gathered from the several sources of information just enumerated. The population of the Province is, in round numbers, 11½ millions, of whom 72½ per cent. live by agriculture. These latter may again be divided into landowners who are only 4 per cent., cultivators who are 70, and labourers who are 26 per cent., of the agricultural population. Landowners are roughly divided into two classes—taluqdárs and others, chiefly co-parcenary communities. Taluqdárs are 346 in number out of 180,000 landowners, and hold 59 per cent. of the area of the Province. Tenants with rights of occupancy under the Oudh Rent Act are 8,117, and tenants-at-will, in round numbers, 1,800,000. The percentage of tenants with rights of occupancy to tenants-at-will is ·5, or one in every 200. I do not refer to intermediate tenures between the proprietors and actual cultivators. They are not numerous, and do not concern the subject with which I am dealing.

"As to the density of the population—Oudh is divided into 12 districts; in only two of these is the pressure of population under 400 to the square mile of the total area; in three it is between 400 and 500; and in seven it ranges from 500 to 700. For the whole Province the average is 469·7. In the North-Western Provinces the corresponding figures are 399·7. The density of the population is thus almost as great as that of Belgium (485), the most densely populated kingdom in Europe, and greater than that of England and Wales (456)—countries where I need scarcely observe manufacturing industries pre-eminently flourish. The cultivated area divided amongst the agricultural families would give to each a farm of five acres.

"These statistics will place the present members of this Council in a better position for estimating the probable effects of the legislation of 1868 upon the Province than their predecessors held at that time. We see from them that the Province is occupied by a dense population depending almost entirely on agriculture for its support; that the protection accorded to occupancy-tenants has reached only a minute class, and that the main body of the cultivators as regards fixity of tenure and enhancement of rent depend entirely on the will of a small body of landlords.

"The protection which it was hoped would be afforded to the tenants-at-will generally by the provisions regarding the right to compensation for improvements, and on taluqdárí estates by the conditions of the sanad, have proved illusory. There has not, so far as I can ascertain, been a single case of such compensation ordered by the Courts on the enhancement of a tenant's rent, and landlords have largely evaded the law either by refusing to allow improvements to be made by the tenant or by requiring him to contract himself out of his right to compensation. The sanad is a weapon of such tremendous power that it must be held in reserve for extreme cases, and Government is naturally reluctant to use it without very grave cause. As a matter of fact, it has been used only once.

"The law, as I have already stated, permits a landlord to turn out a tenant who cannot claim rights of occupancy at the close of any year on a month's notice. It also places no limit on the enhancement of rent which a landlord may exact from such a tenant. If the latter does not agree to the landlord's demands, he must make room for another who will. These powers accorded to landlords have not been allowed to remain a dead-letter. Major Erskine reports that out of 28,477 tenancies which were the subject of examination there were only 5 per cent. in which the component fields and the rent had remained materially unchanged during the preceding 15 years; in 12 per

cent. of the whole number there had been little change in the fields, but the rents had been materially enhanced; in 36 per cent. both fields and rent had been materially altered; and in 46 per cent. the tenants were new-comers. The figures, be it remembered, refer not to a single tract of country, but to tenancies in different districts all over the Province, and leave little doubt that fixity of tenure is rare, and that there is much shifting and changing among tenants.

"As regards enhancement of rent, Major Erskine estimates that during the same period of 15 years there has been throughout the Province an increase of 24 per cent., the rate of rise varying from 13 per cent. in one district to 49 in another. He considers, however, that in many cases the rise is shown to be greater than it really is, owing to landlords having intentionally understated their rents at settlement. There is no doubt that the improvement of communications and the opening out of new markets have enabled the Province to share in the general rise of prices of agricultural produce. It is calculated that since the last settlement prices have risen from 25 to 30 per cent. with which it thus appears that the average rise of rents corresponds pretty closely. This doctrine of averages, however, in such cases must not be pressed too closely. It would be poor consolation for the cultivator in Pertabgurh (a district not traversed by a railway), whose rent has been raised 49 per cent. in 15 years, to be told that prices throughout the Province have risen by 25 or 30 per cent. in the same period. It must also be borne in mind that the full benefit of the rise of prices does not always reach the tenant, and that a large proportion of it is intercepted by the village-banker, to whom the tenant makes over his crop. The mahájan flourishes in Oudh as elsewhere. I may add that there was a general testimony to the fact that rents as a rule were enhanced more with a view to what the tenant could under the threat of eviction be forced to agree to pay than from any estimate of the value of the land and its produce.

"The cultivation of a province which has been not unfitly styled the Garden of India, where there are few manufacturing industries, and where the pressure of population on the soil is very great, is thus carried on by a body of raiyats holding under a tenure which may be described as a yearly tenancy in its simplest and most rudimentary form. I need not waste the time of this Council by bringing forward arguments, with which the discussions of the last few years in England and in India have made us too familiar, to show that this form of tenure under such conditions is the one most discouraging to agricultural efficiency and most likely to lead to the impoverishment and degradation of the cultivators of the soil. The fierce competition for land—

the sole means of subsistence—engendered by increasing numbers must lead to the depression of the cultivator's condition, and thus produce a state of things detrimental to decent agriculture and damaging to the real interests of both landlord and tenant, and of the community at large. Precarious tenure is fatal to agricultural prosperity.

"These possibilities were not overlooked by the able men who framed the present law, and Sir John Strachey and Sir Henry Davies, who were its authors, did not conceal their apprehensions that they might ultimately become realities. Ignorance of the fuller information which we now possess, and the hope that the checks provided would have a more extensive and effectual operation than has proved to be the case, no doubt then justified the belief of the Government of India that the scheme to which they gave their sanction sufficiently met the wants of the time. The Government of to-day, however, have grounds for no such confidence. The lion, though not yet upon us, is yearly creeping nigher, and it behoves us to awake and drive him off before it is too late. In this spirit the Government are now prepared to act. They consider that the following points have been established by Major Erskine's enquiry:—

(1) that though rents had no doubt in many cases been very largely enhanced, yet on the whole the landlords of Oudh have not been guilty of wanton and unjustifiable exaction, and the condition of the people had generally improved;

(2) but that this condition is seriously threatened by various economic causes: prices have risen, largely owing to improved communications and the export of cereals, but rents have risen with similar rapidity, and while there is little prospect of the rise in prices in the immediate future being maintained at the same rate there is every chance of a continuous rise of rent owing to the increasing competition for land and the unprotected state of the tenantry;

(3) that in the interests of agricultural efficiency some amendment of the Rent Law is, in the unanimous opinion of the District-officers, considered to be now essential, so as to give to the cultivator greater security of tenure, including some sort of protection from arbitrary eviction and enhancement, more adequate compensation for improvements, and longer notice to quit in case of eviction.

"The measures best adapted to remedy these evils have been the subject of long and anxious consideration with the Local Government and the Government

of India. All the most experienced revenue-officers of the Province have been consulted over and over again; ripe knowledge from a distant Province has been summoned to council; taluqdárs and landholders of other classes have been constantly referred to; and the results are embodied in the Bill which I am asking leave to introduce.

"The object kept in view in framing the proposals which I am about to explain was to provide a remedy adequate to redress the evils which I have attempted to describe with the minimum of disturbance of the present state of things, and to avoid introducing revolutionary changes in the agricultural economy of the Province which, by appearing to run counter to previous engagements, might afford grounds for imputations on the good faith of the British Government, might excite unnecessary alarm in the landowning classes, and set them and their tenantry at arm's length.

"I have accordingly not to recommend to the Council the introduction in any shape of a heritable right of occupancy acquired by prescription and enjoyed by a privileged class of tenants such as is recognized by the law of older provinces. Great as are the advantages of that form of tenure—and I myself believe that they are very great—the introduction of it into Oudh forms no portion of the scheme embodied in the Bill. It was contended by a very influential school of officers in the early days of Oudh administration that such rights, though in many cases dormant, did exist, and that they should be ratified and strengthened by law. A full enquiry was made into this question during the viceroyalty of Lord Lawrence, and a somewhat bitter controversy was waged round it, the outcome of which was that the Government of India and the Secretary of State accepted the conclusion that no such rights existed at the annexation of the Province by the British Government which could be maintained by the tenant against the will of the landlord. Consequently the Government of that day resolved not to insist on the *introduction* of such rights into the Province against the will of the larger and more important sections of the landlords, who alleged that such a measure would violate the rights guaranteed to them by their sanads. This decision there is now no intention of reversing. Sir Alfred Lyall and the Government of India believe that measures much less drastic and much less distasteful will probably suffice to prevent the disastrous consequences which are to be apprehended from the present state of the law, and are of opinion that such measures should receive a full and fair trial before they are condemned as inadequate.

"The Statement of Objects and Reasons appended to the Bill will explain in detail the alterations which the Bill proposes to make in the law; on this

occasion I shall confine myself to stating the principles on which they are based, and giving an outline of them.

"Transactions between landlords and tenants in Oudh are now regulated almost universally by contract, qualified in some slight degree by custom—a qualification which is becoming weaker year by year. Now, my Lord, seated as I am between most distinguished representatives of commerce on the one hand and law on the other, I am not about to undervalue the benefits which flow to society from freedom of contract between man and man, or the unwisdom of unnecessarily interfering with it. But, like many other dogmas which claim infallibility under all circumstances, which demand implicit belief *semper ubique et ab omnibus*, this principle has been proved by experience to require some qualification in its practical application.

"Unrestricted freedom of contract between two parties one of whom is at the mercy of the other is a very barren gain to the weaker side; and I need not take up the time of this Council in again traversing the ground, every inch of which was fought over last year, in order to show that 1,800,000 tenants holding on yearly tenancies, liable to be evicted at the end of every year and to unlimited annual enhancements of rent, with no other resource than agriculture to look to, are not on equal terms with 180,000 landlords whose hands the law arms with weapons of such potency. Contracts between parties so unequally matched place the tenants, as the weaker party, at a great and manifest disadvantage, not reconcilable with equity, and although good landlords have used, and will use, their power with forbearance, yet we must expect, according to all experience, that such powers will be largely and perhaps intolerably misused. I speak here of the necessary tendencies of the law, and am far from wishing to imply that the conduct of the landlords of Oudh has already brought about such a state of things; on the contrary, I most willingly admit that it is owing in some degree to their forbearance that things are not already much worse than they are, and that the general rule—though I fear there are numerous exceptions to it—is still good feeling between them and their tenantry. But not the less economic causes over which they have little control are daily gaining strength and pushing them on to make the most of the advantages which the law gives them. The Government therefore considers that it is time to intervene on behalf of the weaker party, and to place him on more even terms with the stronger in making his bargain.

"The first restriction to be placed on freedom of contract in the interest of all concerned is a limitation to the power of eviction at the close of every

year. So long as this remains all other precautions or safeguards are useless. A tenant threatened with a measure which involves the loss of all means of support for himself and his family will agree to anything; and to enforce contracts made under such circumstances is merely to allow the law to be used as an instrument for accelerating his ruin. I believe I am correct in saying that the failure of Mr. Gladstone's first Irish Land Act was due mainly to the fact that the power of eviction, and therefore of securing annual enhancements of rent, was left to the landlords.

"This rock we wish to avoid, and the first provision we make is that all tenants now in occupation of land in Oudh—the small class of occupancy-tenants who are already protected by law excepted—should have a statutory right of occupancy for seven years, from the date of the last settlement of the rent or holding, at the rent which they are now paying in the land they hold at the date of the passing of the Act. At the end of that period we propose to allow the landlord to enhance the rent of the sitting tenant to such sum as he and the tenant may agree upon within a limit of one anna in the rupee, or 6¼ per cent. on the rent previously paid. At any time after the expiration of the statutory period a landlord who has not made terms with the sitting tenant may proceed either by notice of enhancement or by notice of ejectment at his discretion. If he proceeds by notice of enhancement, the enhancement must be within the limit above given. If the tenant accepts, a new period begins. If the tenant refuses the proposed enhancement, the holding will become vacant, but no higher rent can be recovered from the next tenant than 6¼ per cent. above the old rent on the same holding. If the landlord proceeds by ejectment, leaving the tenant no option of re-entry, compensation for disturbance will be given up to one year's rent at the rate last paid, and the limitation of 6¼ per cent. will apply to the rent recoverable from the next tenant. In both cases tenants will be entitled to receive before dispossession any compensation due to them for improvements. The right of renewal is to be personal to the tenant in occupancy. On the death of a tenant in occupancy his heir will be entitled to hold on on the same terms to the expiration of the statutory period enjoyable by his predecessor, but must then, should the landlord so wish, vacate the holding on payment of the compensation for improvements found to be due to him.

"We propose further to deprive the tenant of the power of contracting himself out of these rights. I have already briefly touched on the necessity for this, and may be obliged to deal with it at greater length when the provisions of the Bill are discussed in detail; I need not now dwell further on it.

"The scheme is thus based on contract, but on contract limited and restricted in those directions where the absence of such restrictions has proved most mischievous. A landlord may let out his land on the best terms he can get, provided that the term for which he lets it shall not be less than seven years or the rent more than 6¼ per cent. above that previously paid. He may turn out the tenant at the end of seven years, but if he does so he must pay him a moderate compensation for disturbance. The heirs of a deceased tenant, on the expiration of the statutory term, have no rights as against the landlord, except to compensation for improvements; and the landlord, when the holding is vacated under such circumstances, can let the land to any one he pleases for the statutory term without any restriction as to the amount of rent.

"This scheme for the protection of the Oudh tenantry is not based, like most of our legislation respecting the relations of landlord and tenant, upon existing rights, but on the grounds of general utility and expediency, and it has been framed so as to involve the minimum amount of disturbance in the existing law that is consistent with what Government believes to be the requirements of the case. Experience only can tell precisely how far it will be effectual, and its very moderation exposes it to the risk of being evaded or broken through by determined and unscrupulous proceedings. It purports to avert, by regulative measures, the necessity of resorting to more rigorous expedients, but Government desires to reserve in its hands two weapons to be used in case of such necessity arising.

"They would take power, first, to vary the limits of enhancement, in any district or part of a district where this is found necessary, at long intervals. There has been, as already stated, a large increase in rents since settlement, which is no doubt to a certain extent justified by the rise in prices. Existing rents have therefore been accepted as the basis for future enhancements, but the causes which have justified the enhancement since the settlement may cease to operate, or operate much less actively in the future than they have done of late years. It may well be that the tendency to rise in prices may receive a material check, and, if so, the authorisation of an enhancement up to the limits now fixed would be most unfair to the tenants and bring about the very results which we wish to avoid. On the other hand, it is conceivable that in certain localities, if not generally, circumstances may arise which would warrant a landlord in demanding rents in excess of the limits of enhancement now laid down. For these reasons the Bill proposes that the Local Government should have power, from time to time, within periods of not less than seven years, in any district or part of a district to vary the limits of enhancement.

"This provision would operate generally or over large areas, and at long intervals, and would not avail to check cases of exceptional harshness or oppression in which an astute landlord might succeed in evading the provisions of the ordinary law or in converting them into an instrument of exaction to the ruin of his tenantry. To meet such cases we propose to retain and legally define the sanad liability to be enforced as an *ultima ratio*. The Bill accordingly provides that whenever the Lieutenant-Governor and Chief Commissioner is satisfied that an estate is suffering from grave mismanagement, which has since the present year materially deteriorated the condition of the tenantry or diminished the area of cultivation, he may, with the previous sanction of the Governor General in Council, appoint an officer for the revision of the rents of the estate and their authoritative settlement for a period not exceeding ten years.

"My Lord, the grant of such powers is not unprecedented. Only last year, with the approval of the Secretary of State, of the Government of India and of this Council, a section of a much more stringent character was inserted in the Bengal Tenancy Act, which enabled the Local Government, with the previous sanction of the Governor General in Council, when satisfied that it was necessary to do so in the interest of the public order or of the local welfare, to invest a revenue-officer with power to settle all rents, and to reduce existing rents which he considered to be unfair and inequitable. Zamindárí landlords have therefore no ground of complaint that any exceptional treatment is being dealt out to them. As to the taluqdárs, I have already read out to the Council some of the conditions on which they hold their estates, and explained how the sanad is too crushing a thunderbolt to be launched against any but outrageous offenders. The proposals now made will give the Government a statutory power to enforce one of the conditions of the sanad which must always be considered of the highest importance, but, on the other hand, will furnish the taluqdárs with more clear and definite information than they at present possess of the grounds on which Government will in future feel it a duty to step in between them and their tenantry, and of the worst that can happen to them from such interference should it be found to be necessary. At present the very vagueness of the conditions of their sanads exposes them to the arbitrary will in this matter of the Executive Government of the day, and, by reason of the economic changes which are taking place, occasions for the interference of Government are likely to be much more numerous in the future than they have been in the past. It will really be a relief to good landlords among them to know exactly what they may and may not do without incurring the risk of penalty. Colonel Erskine, whom the taluqdárs justly look upon as an old and

firm supporter of their rights and privileges, proposed a much more drastic measure of the same nature, and recommended it in the following terms :—

'I have made the proposal because, although I hope and believe that it will be very long before the Government feels called upon to exercise the great power which it would confer, I think it very important that this power should be secured to Government. Without it the Government may find it necessary to resort to more stringent legislation than I now advocate in order to restrain a few bad landlords from doing what the many good ones would never do; whereas, if the power be in its hands, it will be able to proceed against the real offender without interfering with those whose conduct calls for no interference.'

"Such are the outlines of the Bill which the Lieutenant-Governor, with the full sanction of the Government of India, has prepared for the better regulation of those points in the relation of landlord and tenant in which the defects of the present system have been found to be most mischievous. It has been submitted after three years of investigation, correspondence and discussion with those concerned, and has been, in substance, communicated to the leading taluqdárs. Most of these gentlemen are understood to admit that under the circumstances some amendment of the existing law, in the direction of the draft Bill, is expedient, necessary and inevitable, and I believe that they acknowledge the measure which I am asking leave to introduce to be reasonable and moderate; and since the Government have adopted it in principle, I have grounds for anticipating that the taluqdárs and zamindárs will acquiesce in a measure that has been framed with all possible regard to the real interests of all classes connected with agriculture and the land in Oudh. In Select Committee, should the Bill reach that stage, the taluqdárs will be represented by my hon'ble friend Rájá Amír Hasan Khán, the President of their Association, and any modifications of detail urged in their behalf will receive our most careful and attentive consideration."

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also introduced the Bill.

The Council adjourned to Friday, the 5th February, 1886.

S. HARVEY JAMES,
Officiating Secy. to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 8th February, 1886.

S. G. P. I.—No. 212 L. D.—19-12 11.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 5th February, 1886.

PRESENT:

The Hon'ble C. P. Ilbert, C.S.I., C.I.E., *presiding.*
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
Major-General the Hon'ble T. E. Hughes, R.A.
The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.
The Hon'ble Peári Mohan Mukerji.
The Hon'ble H. St.A. Goodrich.
The Hon'ble J. W. Quinton.
The Hon'ble R. Steel.
The Hon'ble Amir-ud-dowlah Saeed-ul-mulk Rajah Mohamed Ameer Hosan Khán Bahádur Mumtaz Jung.
The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

INDIAN SECURITIES BILL.

The Hon'ble SIR A. COLVIN introduced the Bill to amend the law relating to Government Securities, and moved that it be referred to a Select Committee consisting of the Hon'ble Messrs. Ilbert, Evans and Steel, the Hon'ble Rao Saheb Vishvanath Narayan Mandlik and the Mover, with instructions to submit their Report within one month.

The Hon'ble MR. ILBERT said:—"When the Act which it is now proposed to amend was under discussion before the Council at Simla last autumn I said that it was the intention of the Government to leave two questions open for future decision, first, whether the provision which it contained as to the rights of the survivors of joint holders of Government securities should be applied to all Government securities to be hereafter issued; and, secondly, whether a similar provision should be applied to certain other forms of joint contract, such as ordinary negotiable instruments.

"On the first of these questions I am bound to accept the deliberate opinion of gentlemen conversant with banking business that it is impossible for them without serious inconvenience to the public to adapt their practice to the law as laid down in section 45 of the Contract Act, but I accept it with regret, because I am compelled to admit that if the existing law is unsuitable to Government securities it is probably unsuitable to other forms of contract also, and, if so, we shall be under the necessity sooner or later of proposing a more general amendment of the law. The case of Government securities is urgent and the remedy is obvious, and accordingly I think that the proper course is to deal with that case alone in the present Bill, but I intend to take early steps for ascertaining the views of the High Courts and other authorities with respect to the law which regulates the devolution of joint rights and liabilities in the case of other forms of contract.

"There is another provision of this Bill which suggests the possible expediency of more general legislation. When Government securities constitute the subject of a public trust, it has often been the practice to vest them in a Government officer, such as the District Magistrate, who is intended to hold them not personally but by virtue of his office; and the Bill proposes to remove the doubts which have existed as to the legality of this practice. But several cases have recently occurred in which it would have been convenient to vest other forms of trust-property in a Government official as such, and to which the provisions of the Official Trustee Act have, for various reasons, been found inapplicable. For instance, the Official Trustee is required to perform active duties with respect to trust-property vested in him, and is entitled to remuneration for those duties; he could not remain passive and hand over his duties to a local committee.

"In England the Secretary to the Charity Commissioners for the time being is constituted a corporation sole for the purpose of holding any property held on a charitable trust, and the practice of the Education Department, in settling schemes for the regulation of educational endowments, is to vest the property in this official as a passive, bare or dry trustee, leaving all powers of management to a committee which may be either elected or appointed, and the constitution of which may be changed without affecting the legal devolution of the trust-property. It would be worth the while of Local Governments to consider whether a similar provision might not be useful in this country for meeting the cases to which I have referred."

The Motion was put and agreed to.

The Hon'ble SIR A. COLVIN also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES BILL.

The Hon'ble MR. ILBERT presented the Report of the Select Committee on the Bill to provide for the voluntary Registration of certain Births and Deaths, for the establishment of General Registry Offices for keeping Registers of certain Births, Deaths and Marriages, and for certain other purposes.

INDIAN REGISTRATION ACT, 1877, AMENDMENT BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to amend the Indian Registration Act, 1877.

The Council adjourned to Friday, the 12th February, 1886.

S. HARVEY JAMES,
Offg. Secy. to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 8th February, 1886.

Government of India Central Printing Office.—No. 563 L. D.—8-2-86.—308.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 12th February, 1886.

PRESENT:

The Hon'ble C. P. Ilbert, C.S.I., C.I.E., *presiding*.
His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
Major-General the Hon'ble T. E. Hughes, R.A.
The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.
The Hon'ble Peári Mohan Mukerji.
The Hon'ble H. St.A. Goodrich.
The Hon'ble G. H. P. Evans.
The Hon'ble J. W. Quinton.
The Hon'ble R. Steel.
The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

REGISTRATION OF BIRTHS, DEATHS AND MARRIAGES BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to provide for the voluntary Registration of certain Births and Deaths, for the establishment of General Registry Offices for keeping Registers of certain Births, Deaths and Marriages, and for certain other purposes, be taken into consideration. He said:—

"The main object of this Bill is, as I explained last year, to provide means of obtaining more satisfactory evidence of births, deaths and marriages occurring in certain classes of the community. The Bill is limited in its scope and permissive in its character. It does not seek to establish a general system of registration of births, deaths and marriages for all classes, still less to make that system compulsory. It applies only to a comparatively small class, and only to those members of that class who choose to avail themselves of its provisions. It will not set up any new and expensive machinery, and it is expected that any extra cost which it may involve will be recouped by the fees levied under it.

"The Bill is intended primarily for the benefit of Christians, whose baptisms and burials are registered by their clergymen, and whose marriages are solemnized in accordance with the Christian Marriage Acts. When the Bill was introduced a suggestion was made that the provisions of the chapter relating to the registration of births and deaths should be extended to Hindus and Muhammadans, and this suggestion was much discussed in the papers which were laid before the Select Committee. On the one hand, it was urged—and it must, I think, be admitted—that Hindus and Muhammadans would often be glad to secure the advantages of registration for evidential purposes; but, on the other hand, it seemed clear that any large and general extension of the scope of the Bill would be inconsistent with its character, would require the establishment of machinery on a scale altogether incommensurate with that which had been contemplated, and might involve indefinite expenditure. Under these circumstances, the Select Committee came to the conclusion that they would not be justified in going further than to insert a provision enabling Local Governments to extend the system of voluntary registration cautiously and experimentally to other classes within limited areas. If the result of any such experiment should show that there is a genuine demand for an extension of the system, a strong case would be made out for legislation to supply the requisite machinery.

"In the meantime we must be content to work with existing machinery. Doubts have been expressed whether in those towns where a system of registration for statistical purposes already exists it will work in harmony with our new system of registration for evidential purposes; but I feel pretty confident that the difficulties which have been suggested may be overcome by suitable administrative arrangements. Throughout the greater part of the country we shall have to rely mainly on the voluntary agency of those ministers of religion who at present keep registers of baptisms and burials. Many of these gentlemen have supplied us with useful suggestions, but I observe that some of them do not fully understand the grounds on which this legislation has been undertaken. Thus a chaplain writing from Delhi remarks that the existing ecclesiastical registers are carefully kept, that the entries are made under the signature of respectable persons, and the particulars given are obtained from the parties concerned. Why, he asks, should they not be admissible in evidence, and why set up what he describes as the 'cumbrous and expensive machinery excogitated in the Bill.' I hope that the machinery proposed will prove to be neither cumbrous nor expensive, but perhaps I did not sufficiently explain in introducing the Bill the nature of the objection which has

been taken to the evidence obtainable under the existing system. It is a purely technical objection, and implies no disparagement of the care with which ecclesiastical registers are kept. There is a section in the Evidence Act which gives relevance to entries in public records made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which the record is kept, and it has been questioned by high legal authority whether entries in ordinary ecclesiastical registers fell within the category to which this section refers. This is the doubt which we desire to remove with the least possible disturbance of existing arrangements. If those clergymen who, we hope, will act as voluntary Registrars will compare the revised Bill with the Bill as originally introduced, they will see that the Select Committee have endeavoured to meet their wishes in every way, and to avoid imposing on them duties which would be inconsistent with the discharge of their ecclesiastical functions. For instance, the original scheme was to establish Registrars for specified local areas. But it was represented that, whilst a minister might be willing to act as Registrar for his own congregation, he might be disinclined to undertake the duty for the benefit of members of other congregations. The objection seemed reasonable, and accordingly it will be found that, under the revised Bill, Registrars may be appointed not merely for specified areas but also for specified classes. Again, we have modified, in accordance with wishes which have been expressed, the section of the Bill which directs certain clergymen to send entries to the central office through their ecclesiastical superiors. This particular section has had to encounter another objection which I have been unable to remove by amendment, but which I can satisfactorily explain away. It refers to 'the Churches of England, Rome and Scotland' in that order, and I am told, in one of the papers from Bombay, that to place the words 'Church of Rome' before the words 'Church of Scotland' is an error which will give grave offence. Now the truth is that the draughtsman was wholly guiltless of any sinister desire to depreciate the status of the Church of Scotland, and had merely adopted an alphabetical arrangement as being the least invidious. If the Church of Rome appears to take precedence of the Church of Scotland in this section, it is merely because in the English alphabet, as in alphabets which existed long before any of the Christian churches were dreamt of, the letter R takes precedence of the letter S. As a matter of fact, lower down in the same section, the Church of Scotland is, for reasons not unconnected with draughtsmanship, mentioned before the Church of Rome.

"I need not explain in detail the other alterations which have been made in the Bill. The chapter relating to registration of marriages has, on the

advice of a leading member of the Parsi community at Bombay, been extended to certain Parsi marriages which are at present registered much in the same way as marriages under the Christian Marriage Acts.

"The alterations in the chapter relating to the registration of births and deaths have been suggested by the criticisms which we have received, and by a further comparison with the English registration law. In considering the applicability of the latter law the Committee have borne in mind the essential difference between a system of registration which is universal and compulsory and a system which is partial and permissive. Thus the English law imposes on certain persons the obligation of giving notice of a birth or death. The Indian Bill merely requires the Registrar to make an entry on the receipt of notice from any one of certain persons authorized to give the notice, and we have found it possible to extend this latter class so as to make it include all persons who are likely to be in a position to give satisfactory evidence of the event. But we have not seen our way to a provision authorizing notices of births and deaths to be sent by post. The whole value of the measure depends on the register book being kept, and the entries in it being authenticated, in such a manner as to minimize the risk of fraud or error, and it is obvious that a book made up of loose fly-leaves would be open to serious objection on that score. If this were a compulsory measure, arguments based on the difficulty and inconvenience of personal attendance would be entitled to great weight. But it is only a permissive measure, and those who wish to take advantage of its provisions must be prepared in some cases to face a certain amount of trouble and expense.

"On the whole, I can confidently commend the Bill to the Council as one which, though modest in its scope, will, I believe, prove a very useful addition to our Statute-book."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

INDIAN REGISTRATION ACT, 1877, AMENDMENT BILL.

The Hon'ble MR. ILBERT also moved that the Report of the Select Committee on the Bill to amend the Indian Registration Act, 1877, be taken into consideration. He said :—

"The principal object of this Bill was to facilitate the issue of mortgage-

debentures by companies by exempting them from registration under the Indian Registration Act when the mortgage-deed to which they refer is so registered.

"All the proposals of the Bill as introduced have met with general approval, but the Select Committee have received various suggestions for amending the Registration Act in other respects. Only one of the amendments suggested appeared to be of sufficient urgency to justify its being dealt with in the present Bill. There is a recent decision of the Allahabad High Court to the effect that receipts for payment of mortgage-money are compulsorily registrable. Almost all the authorities whom we have consulted are agreed that, whether this interpretation of the Act is right or wrong, it cannot be enforced without causing great practical inconvenience. Accordingly, a clause has been added to the Bill in Select Committee expressly exempting from compulsory registration any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, whether the endorsement does or does not purport to extinguish the mortgage, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage. In so framing the clause we have, as regards endorsements, followed the course recommended by the High Court at Bombay, and, as regards other receipts, the general tenor of the opinions expressed by the authorities whom the Government of India has consulted."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

BENGAL TENANCY ACT, 1885, AMENDMENT BILL.

The Hon'ble MR. EVANS moved for leave to introduce a Bill to amend sections 12 and 13 of the Bengal Tenancy Act, 1885. He said:—

"The object of this Bill is stated in the Statement of Objects and Reasons as follows: It 'is to limit the registration of mortgages in landlords' records to those mortgages which are accompanied by possession and usufruct, and thereby to give effect to what was in fact the intention of the legislature when the Bengal Tenancy Act was passed.' The necessity for this very small measure arises in this way. The object of these two sections, 12 and 13, of the Bengal Tenancy Act is to substitute an official

record in the first instance, and an official machinery for recording the transfer of permanent tenures, providing that the fee which the landlords are entitled to receive upon such transfers should be sent to the Collectors, who should themselves notify the transfers to the zamíndárs, who are to be able to make the necessary entries in their sheristas for their own guidance in dealing with the tenures. Formerly the state of the law was that it was necessary, when any transfer by gift, sale or otherwise took place of a permanent tenure, that this transfer should be registered in the zamíndári sherista, and on that registration the zamíndárs were in the habit of getting a small fee. It was found inconvenient for many reasons which I need not dilate upon, and it was proposed in the new law that the registrar should take the fee and register, and that no such transfer should take place without registry and the payment of a fee and a notification through the Collector to the zamíndár. This was the machinery which was substituted for the former one and considered more effective. It will be noted from what I have said that the old words were a 'transfer by gift, sale or otherwise', and it had not, as a matter of fact, been held that a mortgage came within this definition at all, nor was it the practice that zamíndárs should demand that mortgages should be registered in their sheristas, and the reason, of course, is not far to seek. It was because, while the mortgages were simply intended to raise money on lands, without any transfer or the creation of new tenants by such mortgage, it did not, as a matter of fact, concern them at all. When the new Act was being made, and when provisions were being introduced for the transferability of raiyati holdings, it was feared by the zamíndárs that, under the guise of mortgages by which a mortgagee was to be put in possession, a transfer would, in point of fact, be effected of these occupancy-holdings, so as to defeat their right of pre-emption. A good deal of discussion took place in regard to that matter, but, although some proposals were made for limiting the operation of this word 'mortgage' to a mortgage involving immediate possession, the matter was dropped out of sight owing to the abandonment by the Government of the provisions with regard to the transferability of occupancy-holdings; and so it came to pass that, when there existed the corresponding words in the provisions with regard to the registration and transfer of permanent tenures, the matter was also more or less lost sight of. The result is that, as the words stand at present, in certain classes of mortgages, particularly in mortgages after the English form, which are declared by the Transfer of Property Act to be transfers of property with the right of reconveyance, the result is that, whereas an English mortgage is really only a method of raising money which allows the tenureholder to remain in possession, the transaction being one with which the landlord has

nothing to do, yet this transaction may not take place without all those formalities, the description of the tenure, the payment of a fee and notices to the landlord, and all the rest of it; and although it is probable that the simple mortgage-bonds which do not carry possession with them can be made without this difficulty, still it is very certain that mortgages in the English form may not be made without this result. The result of the law has been very serious inconveniences. Although the number of mortgages registered in Calcutta since the passing of the Act is very small, yet a very considerable number of mortgages are kept back owing to this difficulty. I am informed that the Chamber of Commerce is about to make a representation on the subject. Under these circumstances, seeing that it was never the intention of the legislature to do anything more than to subject a transfer by mortgage with possession to the same rule as sales, it appears to me that it is highly desirable that the inconveniences that have arisen from inadvertence should be removed. Under these circumstances I have brought forward this Bill, and beg leave to introduce it. The effect of it will be, so far as I understand, merely to do that which we arranged with the zamíndárs to do, to avoid doing that which we never intended to do, which they never asked us to do, which they had no reason for asking us to do, and which they do not at present desire us to do."

The Hon'ble PEÁRI MOHAN MUKERJI said :—" I wish to observe that, in the Select Committee on the Bengal Tenancy Bill, not only I but the hon'ble member who represented the views of the Bengal Government moved to limit the definition of 'transfer' among other transactions to mortgages with possession. That amendment was accepted by the Committee when there was in the Bill a section providing for the transfer of occupancy-holdings, and the definition of 'transfer' was intended to apply both to tenures and to occupancy-holdings. When the section about the transfer of occupancy-holdings was abandoned, the definition of 'transfer' was also struck out of the Bill, and it was simply a matter of oversight, as has been observed by the hon'ble mover of this Bill, that the word 'transfer,' with reference to the tenure sections of the Bill, was not qualified in the way in which the Select Committee intended it to be qualified. I think therefore that the Bill which the hon'ble member intends to introduce will simply give effect to what was the intention of the legislature. But I should mention that in Behar generally and in parts of Bengal this amendment will perceptibly curtail the gains of landholders."

The Hon'ble MR. ILBERT said :—" The question raised by this Bill appears to be one purely between tenureholders and zamíndárs. The amendment is moved on behalf of tenureholders, and I understand the Hon'ble Peári

Mohan Mukerji to say that he accepts it on behalf of zamíndárs, and he is very probably right in saying—although I do not remember precisely what took place—that it was the intention of the Select Committee to qualify sections 12 and 13 of the Bengal Tenancy Act in some such way as the Hon'ble Mr. Evans now proposes. Under these circumstances I need hardly say that no objection will be offered to the Bill on behalf of the Government of India."

The Motion was put and agreed to.

The Hon'ble MR. EVANS also introduced the Bill.

The Council adjourned to Friday, the 19th February, 1886.

S. HARVEY JAMES,
Offg. Secy. to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 17th February, 1886.

Govt. of India Central Printing Office.—No. 500 L. D.—18-2-86.—300.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 19th February, 1886.

PRESENT:

The Hon'ble C. P. Ilbert, C.S.I., C.I.E., *presiding*.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
Major-General the Hon'ble T. E. Hughes, R.A.
The Hon'ble Peári Mohan Mukerji.
The Hon'ble H. St.A. Goodrich.
The Hon'ble G. H. P. Evans.
The Hon'ble J. W. Quinton.
The Hon'ble R. Steel.
The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.
The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

BENGAL TENANCY ACT, 1885, AMENDMENT BILL.

The Hon'ble MR. EVANS moved that the Bill to amend sections 12 and 13 of the Bengal Tenancy Act, 1885, be taken into consideration. He said:—"I do not think I need make any further remarks on the provisions of the Bill. The wording has been carefully considered by the Hon'ble the President, the Hon'ble Peári Mohan Mukerji and myself, and there has been no objection found that requires consideration."

The Motion was put and agreed to.

The Hon'ble MR. EVANS also moved that the Bill be passed.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES RENT ACT AMENDMENT BILL.

The Hon'ble MR. QUINTON moved for leave to introduce a Bill to amend the North-Western Provinces Rent Act, 1881. He said:—

"The changes proposed are not of a revolutionary character. They do not touch substantive law, and relate merely to the provisions respecting appeals in cases under the Rent Act.

"These cases are classified as applications and suits. In certain classes of applications, decisions passed by a Collector or Assistant Collector of the first class, when the value of the subject-matter exceeds Rs. 100, are declared to be final, subject to revision by the Commissioner or the Board; the obvious intention of the law being to stop further litigation after the first judicial decision, leaving to the superior revenue-authorities power to correct errors in exceptional cases. The effect of these provisions has, however, been very different. Petitions sent by post are received and acted on by Commissioners and the Board of Revenue; and under the Court-fees Act applications to those authorities require a stamp of only one rupee. Advantage has been taken of these facilities to work, to an extent never contemplated, the provisions respecting revision to which I have alluded, and the result is that a large number of cases come before Commissioners and the Board in which no action is called for, and that two appeals are given in cases where the law says there should be no appeal at all. In the year 1883-84 the number of these applications received by Commissioners was 2,594 and by the Board 1,044, the latter being in fact second appeals. Nearly 67 per cent. of these petitions were dismissed, as there appeared no ground for interference with the orders. The disposal of such cases, however, encroaches very materially on the time of Commissioners and the Board, and fosters gambling litigation. It is proposed therefore to sweep away altogether the revisional powers of the Commissioners and the Board in such cases, and to substitute for them one regular appeal, irrespective of the value of the subject-matter, to the Commissioner; a second appeal to the Board being allowed only when the Commissioner reverses or modifies the order of the Court of first instance. These appeals will bear the stamp provided by the Court-fees Act in analogous cases, which is an *ad valorem* duty calculated on one year's rent. We believe that this will in some parts of the country at least check the practice of filing groundless applications which has grown up under the present law, while it will offer no serious deterrent to applicants whose cases require a remedy.

"How far the alterations will produce this effect is of course uncertain, and some time must elapse before the effect manifests itself. Meanwhile, however, in at least two divisions the judicial work of Commissioners under the Rent Act has become so great as to cause unreasonable delay to suitors and to embarrass the administration in other departments. The Bill therefore proposes to give to Commissioners a power, to be exercised under the control of the Local Government, to transfer to Collectors appeals from the orders of first class Assistant Collectors pending in their Courts, and to Collectors power to

dispose of such appeals. As set forth in the Statement of Objects and Reasons, this power is analogous to one conferred on Judges by the Bengal Civil Courts Acts to transfer for disposal to Subordinate Judges appeals from the decisions of Munsifs pending in the Judges' Courts. Collectors already dispose of appeals from certain classes of orders of Assistant Collectors of the first class, and as the power will be exercised under the control of the Lieutenant-Governor precautions will be taken against any inconvenience arising to suitors from its use. It is not expected that the number of appeals transferred will be such as to overburden Collectors. There are seven districts in the Benares division, where the measure is likely to be first put in force, and the number of cases that would fall to each Collector by transfers from the congested file of the Commissioner would not constitute an addition to his work of which he could reasonably complain. In the divisions where the judicial work of the Commissioner is not excessive the powers will not be put into operation.

"So much as regards appeals from applications. In the provisions of the Act respecting appeals from *suits* the Bill proposes to make only one change.

"The Rent Act, as it stands, allows of an appeal from the decisions of Collectors, and Assistant Collectors, first class, in rent-suits only when the value of the subject-matter is over Rs. 100 or some question of title is involved. Rent-suits have, however, this peculiarity, that the decision in a single case may govern rents throughout an entire village where the question disputed is the rent to which a tenant is liable. The decision on this point may be of the utmost consequence, not merely to the parties concerned but to a great number of other persons also. It is therefore very desirable that there should be an opportunity for correcting by an appeal erroneous decisions of this nature. If the value of the suit does not exceed Rs. 100, no such remedy now exists; and in the North-Western Provinces the value of the subject-matter in the great majority of rent-suits does not exceed Rs. 100. There is a further inconvenience, too, arising from the present state of the law on this point. A landlord, let us suppose, sues two tenants in the same village before an Assistant Collector of the first class for arrears of rent, the arrears being in one case Rs. 99 and in the other Rs. 101. In both cases the same plea is raised, that the rate at which rent is sued for is in excess of that payable, the holdings are similar in character, the plaintiff and the evidence adduced in both cases are the same, and there are numerous holdings in the village in which the same dispute exists. The Assistant Collector finds that the pleas are bad and decrees at the higher rate. In one case his decision is final and the higher rate is payable ever after so long as the tenancy continues; in the other an

appeal is brought to the Judge, who takes a different view and finds that the rate payable is that alleged by the tenant, which similarly becomes the rate binding on the parties. Two contradictory decisions on what is practically the same issue thus receive the stamp of finality, and the tenants in the village and the landlord himself are not sure of their legal rights. Attempts at exaction, unnecessary litigation and soreness of feeling necessarily ensue. Cases of this nature have already occurred, and the mischief done by the state of the law is not inconsiderable. The Bill therefore proposes to allow an appeal from the decision of a Collector or Assistant Collector, first class, in cases where the value of the subject-matter does not exceed Rs. 100, not merely where a question of title is involved, but where the rent payable is put in issue and determined.

"Opportunity has been taken of the preparation of this Bill to correct an obvious omission in the existing law from which inconvenience has already resulted. Act XXI of 1881 gives no power to the superior Revenue Courts to transfer or bring on their own files cases pending in subordinate Courts—a power conferred on the higher Criminal and Civil Courts by the Codes of Criminal and Civil Procedure respectively, and on the superior Revenue Courts in other provinces by the Rent or Revenue Acts therein in force. The consequence is that officers are sometimes forced by the state of the law to dispose judicially of cases in which they have been concerned in their executive capacity. A case came recently before the Board in which a party in a rent-suit tried by a Tahsildár prayed to have his appeal heard by some other officer than the Collector of the district, who was also, as President of the Municipal Committee, a party to the suit. The Board were unable to pass the order asked for, as the law gave them no power to transfer a case from one Revenue Court to another. I need not waste the time of the Council by dilating on the necessity for applying a remedy to such a state of things. The Bill proposes to effect this by conferring on the Board of Revenue the powers required for the purpose."

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also introduced the Bill.

The Hon'ble MR. QUINTON also moved that the Bill and Statement of Objects and Reasons be published in the North-Western Provinces and Oudh Government Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES LAND-REVENUE ACT AMENDMENT BILL.

The Hon'ble MR. QUINTON also moved for leave to introduce a Bill to amend the North-Western Provinces Land-revenue Act, 1873. He said:—

"Here also I have no startling changes to announce. The revenue laws of the North-Western Provinces impose upon the Commissioner of a division certain duties which can be discharged by him alone. If therefore in any division the work arising out of these duties increases or accumulates to an unmanageable extent, the law affords no means of relieving the Commissioner short of breaking up the old division, constituting two new divisions and appointing a second Commissioner. The creation of a permanent appointment of this nature is generally more than the circumstances call for, and is a measure which in any case the Lieutenant-Governor would in the present straitened condition of the finances be very unwilling to recommend, and the Government of India and the Secretary of State still more unwilling to sanction. In the Bill which I have just obtained leave to introduce measures have been proposed, one effect of which we hope will be to lighten one branch of the Commissioner's duties. The operation in this direction of the alterations proposed in the system of appeal is uncertain, and in parts of the North-Western Provinces will not contribute very much to this result in consequence of the small size and low rent of the holdings. The plan of re-distributing the work when it bears heavily on Commissioners among the District Collectors is at most a temporary and tentative contrivance for adjusting the strain upon the Divisional Officers, and would be insufficient if the pressure were serious or prolonged.

"In Bengal, Bombay, the Central Provinces and the Punjab the law allows of the appointment of Additional or Assistant Commissioners to meet cases such as those I have referred to, and relief of this nature has with advantage been not unfrequently afforded.

"The Bill which I am asking leave to introduce proposes an analogous measure for the North-Western Provinces, and is drawn upon the lines of the Act passed by the Council last year, which authorized the appointment of an Additional Judicial Commissioner in Oudh—an appointment which I may say was made for a limited period now expired, and quite justified the reasons which induced the Council to pass the Act.

"The power to appoint an Additional Commissioner in any division can be exercised only with the sanction of the Governor General in Council, who is

little likely to approve of unnecessary or extravagant appointments; and there is no intention of putting it in force till the transfer of appellate work to Collectors has been seen and tested."

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also introduced the Bill.

The Hon'ble MR. QUINTON also moved that the Bill and Statement of Objects and Reasons be published in the North-Western Provinces and Oudh Government Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

CRIMINAL PROCEDURE CODE, &c., AMENDMENT BILL.

The Hon'ble MR. ILBERT moved that the Hon'ble Messrs. Goodrich and Quinton and the Hon'ble Rao Saheb Vishvanath Narayan Mandlik be added to the Select Committee on the Bill to amend the Code of Criminal Procedure, 1882, the Bombay District Police Act, 1867, the Indian Penal Code and the Prisoners' Act, 1871.

The Motion was put and agreed to.

The Council adjourned to Friday, the 26th February, 1886.

S. HARVEY JAMES,
Offg. Secy. to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 25th February, 1886.

Government of India Central Printing Office.—No. 667 L. D.—25-2-86.—308.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 26th February, 1886.

PRESENT:

The Hon'ble C. P. Ilbert, C.S.I., C.I.E., *presiding*.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
Major-General the Hon'ble T. E. Hughes, R.A.
The Hon'ble Peári Mohan Mukerji.
The Hon'ble H. St.A. Goodrich.
The Hon'ble J. W. Quinton.
The Hon'ble R. Steel.
The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.
The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

NORTH-WESTERN PROVINCES RENT ACT AMENDMENT BILL.

The Hon'ble MR. QUINTON moved that the Bill to amend the North-Western Provinces Rent Act, 1881, be referred to a Select Committee consisting of the Hon'ble Mr. Ilbert, the Hon'ble Sir S. Bayley, the Hon'ble Sir A. Colvin, the Hon'ble Mr. Hunter and the Mover.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES LAND-REVENUE ACT AMENDMENT BILL.

The Hon'ble MR. QUINTON also moved that the Bill to amend the North-Western Provinces Land-Revenue Act, 1873, be referred to a Select Committee consisting of the Hon'ble Mr. Ilbert, the Hon'ble Sir S. Bayley, the Hon'ble Sir A. Colvin, the Hon'ble Mr. Hunter and the Mover.

The Motion was put and agreed to.

DEO ESTATE BILL.

The Hon'ble SIR S. BAYLEY moved for leave to introduce a Bill to apply the Chutia Nagpur Encumbered Estates Act, 1876, to the Deo Estate in the Gaya District. He said:—

"The object of this Bill is to give effect to a private arrangement that has been come to by and on behalf of the Rájá of Deo with his creditors. The estates of the Rájá of Deo are situated in the south of the Gaya district adjoining the Chutia Nagpur division, and his raiyats are living very much in the same condition as the people of Chutia Nagpur. The Rájá of Deo is the representative of an ancient Rájput family who have for many generations done very good service to the Government, extending as far back as the rebellion of Cheyt Singh; they have given assistance to the Government in the Sambalpur troubles, the Kol rebellion, and lastly they gave us, to my own knowledge, very great assistance in the year of the Mutiny. For these reasons, and looking to the position of the family, the Government of Bengal considered it of serious political importance that the estates of the Rájá should, if possible, be maintained. Unfortunately, in the days of the father of the present Rájá the estate fell very heavily into debt. The Government of Bengal applied to us at the beginning of last year on the subject, and various proposals were made. At one time it was proposed that there should be a deed of assignment by which management on the part of the Government should be secured, but it was considered that there were legal difficulties in the way which would prevent that proposal being worked out satisfactorily. The Rájá himself wanted his estates to be taken under the management of the Court of Wards, but, although the North-Western Provinces Act allows that proceeding, the Bengal Act gives no power to take an estate under the management of the Court of Wards when the owner is not a minor or is not in any other way disqualified.

"The arrangement which has now been come to is an arrangement by consent. We agreed to legislate on the condition that a scheme for paying off the debts was laid before the creditors, and that all the creditors should agree as to the amount of their debts under the scheme for settlement. Accordingly a meeting was held on the 19th January last, when all the creditors appeared either in person or by agent before the Collector of Gaya; the scheme was explained to them, and they have all signed the agreement. The Mahárájá of Darbhangá has acceded separately on the condition of priority which he attaches and which will be embodied in the Bill. The reason of this is that the Mahárájá of

Darbhangá, who is the largest creditor, holds a decree the execution of which has been postponed to next month, in order that a satisfactory settlement might in the meantime be entered into. These are the circumstances under which I ask leave to introduce the Bill, and I hope there will be no objection to it."

The Motion was put and agreed to.

The Hon'ble SIR S. BAYLEY also introduced the Bill.

The Council adjourned to Friday, the 5th March, 1886.

S. HARVEY JAMES,
Offg. Secy. to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 1st March, 1886.

Government of India Central Printing Office.—No. 703 L D —1 3-86 —306.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 5th March, 1886.

PRESENT:

The Hon'ble C. P. Ilbert, C.S.I., C.I.E., *presiding*.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
Major-General the Hon'ble T. E. Hughes, R.A., C.I.E.
The Hon'ble Peári Mohan Mukerji.
The Hon'ble H. St.A. Goodrich.
The Hon'ble J. W. Quinton.
The Hon'ble R. Steel.
The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.
The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

INDIAN SECURITIES BILL.

The Hon'ble SIR A. COLVIN, by leave, postponed the presentation of the Report of the Select Committee on the Bill to amend the law relating to Government Securities.

CRIMINAL PROCEDURE CODE, &c., AMENDMENT BILL.

The Hon'ble MR. ILBERT presented the Report of the Select Committee on the Bill to amend the Code of Criminal Procedure, 1882, the Bombay District Police Act, 1867, the Indian Penal Code and the Prisoners' Act, 1871.

INDIAN TRAMWAYS BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to facilitate the construction and to regulate the working of Tramways.

PETROLEUM BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to amend the Petroleum Act, 1881.

DEO ESTATE BILL.

The Hon'ble SIR STEUART BAYLEY moved that the Bill to apply the Chutia Nagpur Encumbered Estates Act, 1876, to the Deo Estate in the Gaya District be taken into consideration. He said :—"I have nothing to add to what I said last week on the subject, but with reference to the Motion which stands in the Hon'ble Mr. Evans' name, and which I understand is going to be moved on his behalf by the Hon'ble Mr. Goodrich, I may say that the sub-section was introduced because it is the settled procedure by which arrears of rent are recoverable in estates under the Court of Wards. But that provision is not in the Chutia Nagpur Act, and as I have no strong opinion on the subject, I shall not oppose the amendment which stands in the name of the Hon'ble Mr. Evans."

The Motion was put and agreed to.

The Hon'ble MR. GOODRICH, on behalf of the Hon'ble Mr. Evans, moved that sub-section (7) of section 2, regarding the recovery of arrears of rent under the Public Demands Recovery Act, 1880, be omitted. He said :—"The power sought to be taken has not been found necessary for the management of the neighbouring estates under the Chutia Nagpur Act and other estates adjoining. No reason is set forth in the Statement of Objects and Reasons why any difference should be made in the status of the raiyats in these and the neighbouring estates, and in the absence of any statement of reasons for this provision I beg to move that the amendment of which the Hon'ble Mr. Evans gave notice be accepted."

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY then moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

The Council adjourned to Friday, the 12th March, 1886.

S. HARVEY JAMES,
Offg. Secy. to the Govt. of India,
Legislative Department.

FORT WILLIAM ;
The 8th March, 1886.

Government of India Central Printing Office.—No. 740 L. D.—6-3-86.—308.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 12th March, 1886.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

The Hon'ble C. P. Ilbert, C.S.I., C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

Major-General the Hon'ble T. E. Hughes, R.A., C.I.O.

The Hon'ble Peári Mohan Mukerji.

The Hon'ble H. St.A. Goodrich.

The Hon'ble J. W. Quinton.

The Hon'ble R. Steel.

The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

The Hon'ble Rao Saheb Vishvanath Narayan Mandlik, C.S.I.

INDIAN SECURITIES BILL.

The Hon'ble SIR A. COLVIN presented the Report of the Select Committee on the Bill to amend the law relating to Government Securities.

CRIMINAL PROCEDURE CODE, &c., AMENDMENT BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to amend the Code of Criminal Procedure, 1882, the Bombay District Police Act, 1867, the Indian Penal Code and the Prisoners' Act, 1871, be taken into consideration. He said :—"This Bill was introduced as a Bill to amend the Criminal Procedure Code with respect to certain minor points, and, in the form in which it has left the Select Committee, it still answers to that description. The alterations made in the original clauses of the Bill are few and unimportant. The Committee received numerous suggestions for amending other parts of the Code besides those touched by the Bill, and some of these suggestions appear to be well worthy of the attention of the legislature. But, except in a very few cases, the Committee did not think it would be desirable

to recommend their adoption without giving further notice to the public, and it was not, in the opinion of the Committee, worth while to delay the passing of this Bill for the purpose of further publication. Accordingly the new sections only make amendments which appeared to the Committee to be clearly desirable, and not to raise any questions of principle."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

INDIAN TRAMWAYS BILL.

The Hon'ble MR. ILBERT also moved that the Report of the Select Committee on the Bill to facilitate the construction and to regulate the working of Tramways be taken into consideration. He said :—"The Report shows that this measure has not undergone any material change in its passage through the Select Committee, and there is only one point to which I need refer in bringing the revised Bill before the Council. The Bill has been criticized for not containing any precise definition of the term 'tramway'. Now we all have a general notion of what is meant by a tramway as distinguished from a railway, but if you were to try the experiment of framing a definition which should include all undertakings to which the present Bill ought to apply, and should exclude all undertakings to which the Indian Railway Act ought to apply, you would find the task one of great difficulty. The great bulk of undertakings lie clearly on one side or the other of the dividing line, but there are certain undertakings about which my friends in the Public Works Department would tell you that it was by no means easy to say whether they should be classed as tramways or as railways. All that can be said is that, when a so-called tramway is constructed exclusively within the limits of a town or populous place, it is pretty certain to belong to the kind of undertakings to which this Bill is intended to apply, but that if it passes beyond those limits it is apt to fall into the category of light railways. Accordingly the Bill provides that, when any part of a proposed tramway is to traverse land which is not included within the limits of a municipality or cantonment, it is not to be constructed without the consent of the Government of India, in order that the Public Works Department may have an opportunity of determining, with reference to the circumstances of each particular case, to which of the two categories the proposed works ought to be treated as belonging."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

PETROLEUM BILL.

The Hon'ble SIR STEUART BAYLEY moved that the Report of the Select Committee on the Bill to amend the Petroleum Act, 1881, be taken into consideration. He said:—"The alterations which the Select Committee have introduced in this Bill since it was previously before the Council are for the most part of a technical nature, and I need not trouble the Council with them in detail. They were considered by the Home Department in communication with Dr. Warden and Professor Pedler, who are the Calcutta experts in this matter, and in the light of a letter from Sir Frederick Abel, which has been made a paper to the Bill. The Home Department accepted the advice of these experts, and the Select Committee have made alterations in the Bill on these strictly technical points in accordance with that advice. I would refer those interested to the Report of the Select Committee for the reasons of them in detail.

"There were one or two other points upon which we have made alterations which may be considered rather as administrative than belonging to the technical portion of the matter. The first of these is in regard to import and transport. The Select Committee have provided means of dealing with the difficulties likely to arise out of the definitions given in the Bill of 'import' and 'transport'. For instance, oil might be produced in portions of British India, say, in Assam or hereafter in Quetta, and transported into other parts of British India, which may yet need testing and regulating; on the other hand, oil once imported into a part of British India and properly tested, if it should go by sea to another part of British India, will not need a second testing; and the Select Committee thought the best way of dealing with this question was to give the Local Governments power to make rules by which they could treat oil already tested and imported from one part of British India to another as if it were transported, and transported oil as imported in order to meet these special cases, and at the same time to give power to the Local Governments, such as Assam and Burma, where petroleum is produced, to have it properly examined and tested there before being transported into other parts of British India.

"Then the Select Committee made a slight alteration in regard to the sampling of cargoes; they have left that to be done by rules to be passed by the Local Governments, enabling them if necessary to break up the cargo into

separate lots for the purpose of testing it where it is supposed that the cargo is not homogeneous. The Committee have also given powers to the Local Governments in special cases to provide for a second or additional testing. The Select Committee have also carried out a suggestion of the Bombay Government with reference to repealing those portions of the Municipal Acts which deal with petroleum so as to avoid the clashing of authority, and they have also introduced a suggestion of that Government to give power to Port Trusts to regulate their own fees for the storage of petroleum.

"The only other point which I consider it necessary to mention is that the Select Committee, instead of making a separate Bill, have consolidated into one Act the Petroleum Law with the alterations which are contained in this Bill."

The Motion was put and agreed to.

The Hon'ble SIR STEUART BAYLEY also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

GUARDIANS AND WARDS BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to consolidate and amend the law relating to Guardian and Ward. He said :—"The law of British India on the subject of guardians and wards, so far as it has been reduced to shape by the legislature, is to be found in a single Act applying, approximately, to European British subjects, and in several Acts and fragments of Acts and Regulations applying to persons who are not European British subjects.

"In the territories subject to the jurisdiction of the chartered High Courts the charters of those Courts provide for appointing guardians of European British minors, and, to a certain extent, of other minors also. But some years ago it was found that there was a gap in the law with respect to appointing guardians for European British minors in those parts of the country to which the jurisdiction of the chartered High Courts does not extend, and it was in order to fill that gap that my predecessor Sir A. Hobhouse introduced and passed the European British Minors Act of 1874 (XIII of 1874). This Act applies, speaking roughly, to European British subjects (I say 'speaking roughly,' because the definition of the class to which the Act applies does not correspond

quite precisely to the definition of European British subjects in the Criminal Procedure Code), and extends to those parts of British India which are not within the jurisdiction of the chartered High Courts. It declares the power to appoint a guardian by will or other instrument; it prescribes the procedure to be observed on an application to the Court for the appointment of a guardian; and it lays down a few simple general rules, taken from the English law, with respect to the considerations to be observed in the appointment of guardians by the Court, and to their powers and duties when appointed by the Court or otherwise.

"Thus with respect to European British subjects we may say that the law as to the appointment, powers and duties of guardians is to be found either in the charters of the High Courts and in the principles of English law and rules of procedure observed by those Courts, or in the European British Minors Act of 1874, which to some extent codified those principles and rules.

"The legislation with respect to the guardianship of minors not belonging to this class, that is to say, with respect to Hindus and Muhammadans generally, is, as I have said, to be found in several Acts and fragments of Acts and Regulations. There is an Act of 1858 (XL of 1858) which was passed for the Bengal Presidency and which has been declared to be in force in the Punjab, Oudh, British Burma and elsewhere. There is an Act of 1864 (XX of 1864) which applies to the Bombay Presidency, and which follows with some variations the Bengal Act of 1858. For Madras there does not appear to be any single Act corresponding to the Bengal Act of 1858 and the Bombay Act of 1864, but several scattered provisions relating to guardians are to be found in the Regulations and Acts applying to the Madras Presidency. Then there is a general Act of 1861 (IX of 1861) extending to the whole of British India. And lastly there are the numerous local Acts constituting Courts of Wards for the different provinces and defining their powers and duties.

"The legislative proposals which I am now about to make originated in some correspondence which took place between the Government of India and the Government of Bombay in the year 1881. The Bombay Government directed attention to certain defects in the Act of 1864, and suggested an amendment of the Act in order to remove difficulties which had been experienced in the administration of minors' estates under its provisions. (I may explain that the Act of 1864, though applying only to the Bombay Presidency, is an Act of this Council and therefore can only be amended by

this Council.) The Legislative Department was compelled to admit the justice of the Bombay criticisms, but found, on looking into the matter, that several of them were applicable to the Bengal Act also, and that there was room for material improvement both in the form and in the substance of the different Acts relating to guardians in force in different parts of the country. The conclusion to which I myself was disposed to come when I first took up the subject was that the best way of dealing with it would be—

(1) to extend the European British Minors Act to the whole of British India, including the Presidency-towns, and to make it applicable to all the classes to which the Indian Succession Act applies; and

(2) to repeal the Bengal and Bombay Minors Acts and the corresponding Madras enactments and to supersede them by an Act which should extend to the whole of British India.

"Thus there would be two general Acts, one applying to persons who, speaking broadly, are under English law, and the other to persons, like Hindus, Muhammadans and Buddhists, whose family relations are governed by personal laws differing materially from the English law.

"Before, however, bringing any such proposals before the Council I thought it advisable to consult Local Governments about them; and accordingly the Government of India issued a Resolution on the 17th October, 1882, asking for the opinions of Local Governments and Administrations on certain points which were discussed in the Resolution. Some time elapsed before we obtained the replies to these inquiries, and the reply of the Calcutta High Court did not reach us until last year. I mention this, not by any means for the purpose of complaining of the High Court, because I know how difficult it is for the Judges to find time for considering intricate legislative proposals, but merely for the purpose of explaining the interval which has elapsed since the issue of the Government Resolution of 1882.

"The opinions which have been received in response to this Resolution have been of the greatest possible value, and they have been most carefully studied in the preparation of the measure which I am asking leave to introduce. In some respects they have induced me to modify the conclusions to which I had previously been disposed to come. For instance, whilst desiring to make the general law uniform in the different provinces, I originally thought it would be best to have two Bills, one providing the law for persons under the Indian Succession Act and the other for all other classes of persons. The proposal to make the law uniform in the different provinces has been generally approved;

but several high authorities, among whom I may mention Sir C. Turner, the late Chief Justice of Madras, Sir C. Sargent, the Chief Justice of Bombay, Mr. Justice West, our Advocate General, Mr. Paul, and the Advocate General of Madras Mr. O'Sullivan, thought that our original proposals did not go far enough in the direction of uniformity, and that it would be possible and preferable to have one law for all classes of the population. On further consideration I think that they are right. Of course nothing can be further from my intention than to interfere with Hindu family customs or usages or to force Hindu or Muhammadan family law into unnatural conformity with English law. But on looking into the European British Minors Act, which was framed with special reference to the requirements of what may be called English minors, it appeared to me that almost all its simple and general provisions were applicable, or might with a little modification be made applicable, to Hindu and Muhammadan as well as to English guardians; and I was very glad to be told by my friend Mr. Mandlik, who has been looking at the draft Bill from the Hindu point of view, that he agrees with me about this.

"Accordingly what I have done has been to take as my model the European British Minors Act, which is the latest and fullest of the Indian Acts relating to guardians, and to frame on its lines an Act applicable as a whole to all classes of the community, but containing a few provisions limited in their application to particular classes. If the Bill is sent to a Select Committee it will doubtless, whilst before the Committee, undergo careful scrutiny on behalf of the several classes to whom it is to apply; and should it turn out that any of its provisions are unsuitable to any of those classes, it will be easy to modify them or to further limit their application. In the meantime I need only repeat that it is not intended by this measure to make any alteration in Hindu or Muhammadan family law.

"The Bill will supersede and repeal the Acts of 1858 and 1864, the general Act of 1861, the Madras enactments to which I have referred and the European British Minors Act of 1874. But it will not repeal or supersede the enactments relating to the different Courts of Wards. The provisions of those enactments are intimately connected with the administrative machinery of the different provinces; and it would be either impossible, or at least very difficult, to supersede them by a general Act applying to the whole of India. They will be accordingly left outstanding. The Bill will relate only to such guardians as are appointed or recognized by the ordinary Civil Courts, and there will be an express saving for the jurisdiction and authority of the different Courts of Wards.

"There will also be a saving for the powers of the chartered High Courts under their respective charters. The Act will apply to those High Courts in the exercise of their original jurisdiction, and I should myself have preferred to enact, as in section 150 of the Probate and Administration Act, 1881, that when proceedings are taken in the High Court with respect to the appointment or control of a guardian they should be taken under the new Act and not otherwise. We should thus sweep away a good deal of vague and antiquated law, and substitute for it a set of rules which would, I believe, be quite as easy to work, and certainly more easy to ascertain. However, in deference what appear to be the views of the High Courts on this point, the Bill will provide that the jurisdiction of the High Courts under their charters is to be maintained alongside of their jurisdiction under the Act.

"It will be necessary to supplement this Bill by making certain amendments in that chapter (XXXI) of the Civil Procedure Code which deals with suits by and against minors, but those amendments will be made by a separate measure which is now in course of preparation.

"I may have an opportunity at a later stage of explaining the more important provisions of the Bill which I am asking leave to introduce: at present I am only concerned to show that a case for legislation has been made out."

The Hon'ble RAO SAHEB VISHVANATH NARAYAN MANDLIK said:—"As the Hon'ble Mr. Ilbert has kindly referred to the part I have taken in going over the draft of this Bill, I wish to say that I think, generally speaking, that its provisions are suitable, and that any difficulties which may present themselves may be further considered in the light of further representations. There is, however, one important point, namely, that of united Hindu families and the guardians of minors who form members of such families. I believe that a recent decision of the Privy Council has introduced some difficulty in the matter of guardians so appointed. I have no doubt that that difficult point will be further considered and suitably provided for when the Bill goes to a Select Committee."

The Motion was put and agreed to.

The Council adjourned to Friday, the 19th March, 1886.

S. HARVEY JAMES,
Offg. Secy. to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 16th March, 1886.

Govt. of India Central Printing Office.—No. 700 L. D.—16-3-86.—300

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 19th March, 1886.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

The Hon'ble C. P. Ilbert, C.S.I., C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble T. C. Hope, C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

Major-General the Hon'ble T. E. Hughes, R.A., C.I.E.

The Hon'ble Peári Mohan Mukerji.

The Hon'ble H. St. A. Goodrich.

The Hon'ble G. H. P. Evans.

The Hon'ble J. W. Quinton.

The Hon'ble R. Steel.

The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

GUARDIANS AND WARDS BILL.

The Hon'ble MR. ILBERT introduced the Bill to consolidate and amend the law relating to Guardians and Wards, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir S. Bayley, the Hon'ble Messrs. Evans and Hunter, the Hon'ble Rao Saheb Vishvanath Narayan Mandlik, the Hon'ble Peári Mohan Mukerji and the Mover. He said:—"I propose to direct the attention of the Council to a few of the more important points raised by the Bill.

"The Bill does not define the term 'minor' further than by saying that the term means a person who has not reached the age of majority according to the law to which he is subject. In so doing it departs from the precedents afforded by the Acts of 1858 and 1874, which I propose to repeal, but follows the precedent of the Contract Act, and avoids some difficult questions connected with the age of majority. Some of these questions were settled by the Indian Majority Act of 1875, but the effect of that Act is not clear in all respects, and its application is confined to persons domiciled in British India. As to persons

resident but not domiciled in British India, it seems clear that they do not attain their majority until 21 if they are in a regulation province, but if they happen to be in a non-regulation province it might be a question whether their age of majority is not governed by Act XIII of 1874, which defines a minor as a person who has not completed the age of 18 years. If this is so, the results may be odd. We all know the American story of the full grown railway passenger, who, on his arrival at San Francisco after a through journey from New York, tendered a half ticket, and when asked whether he really professed to be under age, replied 'No, but I was when I started'. In this country, if the view of the law which I have suggested, but for the accuracy of which I by no means vouch, is correct, a railway journey from a non-regulation to a regulation province might be attended by a still more startling result. A young British officer stationed with his regiment at Delhi may have attained his majority, but if he is subsequently quartered at Meerut he may, on his arrival there from Delhi, find that he has relapsed into infancy. The repeal of the Act of 1874 would be sufficient to remove this particular discrepancy, but it is possible that on this and other points the law of majority should be made more clear. If so, however, the necessary legislation should, I think, be embodied in an amendment of the Majority Act and not in the present Bill.

"Passing on to another definition, I may remark that the term 'guardian' is defined generally as meaning a person having the care of the person of a minor or of his property, or of both, and consequently the provisions of the Bill will apply to all guardians, whether appointed or recognized by the Court, or not, unless their application is expressly limited, as in several cases it is, to particular classes of guardians.

"The second chapter of the Bill relates to the appointment of guardians. Its first two sections deal with appointments otherwise than by the Court, and, in so doing, draw a distinction between the classes to which the Indian Succession Act applies and the classes to which it does not apply.

"In the case of the first class of persons the Bill declares the parental power of appointing guardians in the terms of the European British Minors Act —terms which, to the credit of the Indian legislature, recognize the mother's rights more liberally than they are recognized under the existing law of England.

"In the case of the other class of persons the Bill does not presume to define what powers of appointing guardians are valid under Hindu or Muhammadan law. It merely saves those powers whatever they may be.

"We now pass to the appointment of guardians by the Court, and here the Bill recognizes two classes of cases—one where no guardian has been appointed and the Court is called on to do what the parent might have done, and the other where there are conflicting claims to the guardianship and the Court has to decide between them. Accordingly the Court is empowered either to appoint a guardian or to declare the title of a person claiming to be a guardian. For this purpose concurrent jurisdiction is given to the High Court and to the District Court, and it is provided that as a general rule applications for guardianship of the person of a minor are to be made to the Court having jurisdiction where the minor resides, but this rule is not absolute and convenience is to be regarded. The procedure on the application is to be practically the same as under the European British Minors Act. The rules with respect to the considerations to be observed in appointing a guardian are also taken from that Act, but the Court is expressly directed to have regard to the law to which the minor is subject, and a special rule is added with reference to the particular cases of minors belonging to an undivided Hindu family. My friend Mr. Mandlik referred last week to the conflicting decisions about the power of a Court to appoint a guardian of a minor belonging to such a family, and it will be found that in framing the Bill and Statement of Objects and Reasons those decisions have not been overlooked. We should, I think, all admit that as a rule it is highly desirable to leave a minor belonging to a Hindu undivided family to his natural guardians, without any interference on the part of the Court, but there may be exceptional cases where the intervention of the Court may be required for his protection. The Bill recognizes the possibility of such cases, but expressly provides, *first*, that, where the minor is a member of an undivided Hindu family, special weight is to be attached to any claim which the managing member of the family may make to be appointed or declared guardian, and to any objection which he may take to a proposed appointment or declaration; and *secondly*, that, if a guardian of the property is appointed in such a case, the Court must, except where it is satisfactorily proved that the minor's interests have been actually imperilled, impose such restrictions on the guardian as will prevent him from interfering with the powers of the managing member of the family.

"The chapter relating to the duties, rights and liabilities of guardians is largely taken from the European British Minors Act, with some additions and omissions. A section has been added laying down certain principles which are recognized by the English law as flowing from the fiduciary relation of guardian and ward. On the other hand, a section relating to the religion in

which a ward is to be trained has been omitted. It merely declares what is well-settled English law in the very rare cases in which it is brought into operation, and I did not feel sure that, if applied to a wider class, it might not raise or suggest more difficulties than it removes. If, however, the Select Committee should think that it can with propriety be re-enacted, either with or without modifications, I would gladly insert it in the Bill.

"The sections relating to the powers of a guardian of property deal with one of the questions which was most discussed in the replies elicited by the Government Resolution that preceded the preparation of this Bill.

"The Hon'ble Mr. Melvill was strongly impressed with the dangers to which the interests of minors are exposed under the existing law, and, in order to prevent or check improper alienations of the property, suggested that it should be rendered unsafe for any person to enter into any transaction with respect to the immoveable property of a minor except with a guardian or administrator holding a certificate granted by the Court. On the other hand, he would put a premium on applications for such certificates by removing that provision of the Minors Act which requires the previous sanction of the Civil Court to any alienation or encumbrance by a certificated guardian.

"The Resolution of the Government of India in commenting on these suggestions pointed out that the former of them might interfere, to a much greater extent than is necessary or desirable, with the vast number of transactions which daily take place in relation to immoveable property in which minors are interested, and might flood the Civil Courts with applications for certificates; but with respect to the second suggestion inclined to the view that the existing restrictions on the powers of certificated guardians might in certain cases be relaxed.

"The opinions received on these points appear to me to point to the conclusion that it would not be safe or desirable to restrict the powers of uncertificated guardians in the manner proposed by Mr. Melvill; that as a general rule guardians not appointed or recognized by the Court should have such powers as are given to them by the law to which they are subject, and by the instrument (if any) to which they owe their appointment; that as a general rule also guardians appointed or recognized by the Court should not alienate the ward's property without the leave of the Court; but that the Court should be empowered to relax these restrictions.

"These are the lines upon which the Bill has been drawn. It provides that where a guardian has been appointed or declared by the Court, he shall not sell,

borrow or grant long leases without the previous permission of the Court, but the Court may, subject to rules to be made by the High Court, exempt a guardian from the necessity of obtaining the permission, either generally or in special circumstances, and as to either the whole or any specified part of the ward's property. It then. describes the considerations which are to be observed in granting this permission, and then, in a section relating to the general powers of a guardian of property, it goes on to say that—

"*first*, where a guardian has been appointed or declared by the Court, the Court may by order define, extend or restrict his powers in such manner and to such extent as it may consider to be for the advantage of the ward and consistent with the law to which he is subject;

"*secondly*, subject to any such order and to the specific restrictions to which I have referred, a guardian appointed by will or other like instrument is to have the powers and be subject to the restrictions conferred and imposed on him by that instrument; and

"*lastly*, subject to these possible restrictions, a guardian may do all acts which are reasonable and proper for the realization, protection or benefit of the ward's property and are allowed by the law to which the ward is subject.

"Thus in the cases where the Court does not intervene, which will of course be the great majority, the guardian is left practically as he is under the existing law, but where the Court exercises its power of intervention it is given considerable discretion to mould the powers of the guardian in such way as it may consider conducive to the interests of the ward.

"The section giving this discretion follows the lines of a section in the Probate and Administration Act (section 90), which, I am told, is not working quite satisfactorily in practice. It is very possible that the experience gained in working that section may suggest improvements in the present Bill, but it must be borne in mind that there is a considerable difference between the position of a guardian and the position of an administrator to a deceased person's property, and that restrictions which are unnecessary or undesirable in the latter case may be justified or required in the former.

"The sections to which I have just referred are those which I found it most difficult to frame. In the later portions of the Bill the existing law for the

most part furnished a sufficient guide, but it will be found that additions have been made which will I think be found advantageous both to guardians and to wards. Thus a guardian is empowered to apply to the Court for advice as to the execution of his duties, and is protected if he acts in good faith on that advice. On the other hand, the Court is empowered, either on application by any person interested or of its own motion, to make an order regulating the conduct or proceedings of any guardian whether he is appointed by the Court or not.

"It will have been observed from what I have said that the Bill deals with certain points about which there is room for considerable difference of opinion. If, however, the Council approves of the general lines on which the Bill is framed, it may safely leave these points to be considered and discussed by the Select Committee."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

INDIAN SECURITIES BILL.

The Hon'ble SIR A. COLVIN moved that the Report of the Select Committee on the Bill to amend the law relating to Government Securities be taken into consideration. He said:—"Since this Bill was sent to the Select Committee the only change which has been made is the addition of two sub-sections to the section (7) providing for the case of indorsements by the past holders of public offices, and also for cases where there is more than one holder of such office. The opportunity has also been taken for consolidating the law relating to Government securities. The provisions of the Indian Securities Acts of 1881 and 1885 have accordingly been embodied in the present Bill.

"For the rest, I have nothing to add to what was explained when this Bill was first introduced, and I need not detain the Council by further remarks on the subject."

The Motion was put and agreed to.

The Hon'ble SIR A. COLVIN also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

OUDH RENT BILL.

His Excellency THE PRESIDENT said:—"As this is the last meeting of the season, and we are about to adjourn *sine die*, I think it well to explain that the reason why we have not gone on with the Oudh Tenancy Bill, which was introduced some weeks ago, has been the unavoidable absence of our colleague, the Hon'ble Rájá Amir Hosan, who has great knowledge of the conditions of Oudh agriculture, and takes a special interest in the proposed legislation. As we counted on his co-operation and assistance, and as a severe illness unfortunately prevents him from taking his place amongst us, we have thought it better to postpone taking the Bill through its second stage. In order, however, not to lose time, the Local Government intends, I understand, to publish a draft of the Bill, and to collect the opinions of competent authorities upon it."

The Council adjourned *sine die*.

S. HARVEY JAMES,
Offg. Secy. to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 22nd March, 1886.

Govt of India Central Printing Office.—No 791 L D—28-3 86—300

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 6th May, 1886.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.
His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E., V.C., R.A.
The Hon'ble C. P. Ilbert, C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.
Colonel the Hon'ble W. G. Davies, C.S.I.

INDIAN BANKRUPTCY BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to amend and consolidate the Law of Bankruptcy and Insolvency in British India. He said :—

"Papers relating to this measure have now been before the public for the greater part of a year, and I do not propose to occupy the time of the Council by recapitulating in detail matters which have been explained in documents that have been published and circulated for general information.

"In the Statement of Objects and Reasons accompanying the draft Indian Bankruptcy Bill which the Government of India published last summer, it was remarked that the general amendment of the law of insolvency and bankruptcy in India had of late years been frequently pressed upon the attention of the Government of India.

"It was pointed out that there are at present two main bodies of insolvency law in force in British India—first, the English Statute of 1848, which, roughly speaking, constitutes the insolvency law for the three Presidency-towns and for the towns of Rangoon, Maulmain, Akyab and Bassein; and secondly, Chapter XX of the Civil Procedure Code, which constitutes the nearest approximation

to an insolvency law for the Mufassal generally. It was added that besides these two main bodies of law there was a special insolvency law for the Punjab, and there were several special Acts passed for the relief of indebted landowners in different parts of the country.

"The Statement then referred to the steps which had been taken by Sir A. Hobhouse and others for amending Chapter XX of the Civil Procedure Code, to the general Insolvency Bill which was introduced in 1870 by Sir James Stephen, to the short amending Bill introduced by Mr. Pitt-Kennedy in 1881, and to the circumstances under which both these Bills had been dropped.

"After alluding to the special difficulties which had been experienced in working the existing insolvency law at Bombay and to the repeated requests for an amendment of the law which had reached the Government of India from that city, the Statement went on to say, in a paragraph which I will read in full,—

'9. The insolvency law of the Presidency-towns is admittedly cumbrous, defective and out of date, and in some points of detail is, as has been shown, urgently in need of amendment. The proposals for its revision which have hitherto been submitted to the legislature have been objected to, not so much on the ground that they were undesirable, as on the ground that they were insufficient, and that, while it was desirable to re-cast the whole law and bring it into conformity with English law, it was expedient to postpone legislation for this purpose while proposals involving important amendments of the English law itself were under consideration. This objection has recently been removed by the passing of the English Bankruptcy Act of 1883. That Act may not be perfect; but at least it embodies the accumulated experience of the 35 years which have elapsed since the passing of the Indian Insolvency Act; and in commercial law perfection of detail is less important than uniformity of principle. It is eminently desirable that the circumstances under which a debtor may be declared insolvent and under which he may obtain his discharge should be, as far as possible, the same in London and Calcutta.'

"The conclusion to which the Government of India came on these premises was that the opportunity should now be taken of repealing the Indian Insolvency Act of 1848 and substituting for it a new Act which should, so far as possible, conform in general principles, in language and in arrangement to the latest English Act, but should be freely adapted in details to Indian circumstances. And the draft Bill which was circulated for opinion last summer was framed in accordance with this view.

"Two difficult questions at once suggested themselves in connection with this draft, and are discussed in the Statement of Objects and Reasons which accompanied it.

"The first question was whether the new law should be applied to the whole of British India or only to specified towns. With reference to this question my opinion was, and is, that although there is much to be said in favour of having one and only one insolvency law for the whole of India, yet the balance of advantage is in favour of leaving the Mufassal generally under the Civil Procedure Code, and of confining the operation of the new Act to those towns which are at present under the operation of the Insolvency Act, power being reserved to bring other towns within the same category. The Bill which I am asking leave to introduce will therefore have this restricted operation, but I propose to insert in it provisions which will enable the Courts to deal with up-country debtors in certain cases.

"The second question was in connection with the powers of the Governor General in Council. The present Indian Insolvency Act is an Act of the Imperial Parliament, and as such has operation beyond the limits of British India. For instance, a vesting order made under it vests in the assignee by its direct operation all the real and personal estate and effects of the insolvent in whatever part of the British dominions they may be situate or accrue. The Indian legislature cannot give its own Acts any such extensive operation, and this limitation of our powers has up to this time proved a serious stumbling-block in the way of Indian bankruptcy legislation. I think it is clear that we cannot pass a satisfactory Bankruptcy Act for India, or any part of India, without some assistance from Parliament, and the mode in which I suggested last year that that assistance should be given was by an enabling Act to be passed by Parliament at some time before our Indian measure was carried through its final stage. I sketched out and annexed to the Statement of Objects and Reasons two alternative drafts of an Act of Parliament, which were submitted to the Secretary of State for consideration by the English authorities.

"This is how the matter stood last July. It remains for me to explain what has taken place since then. I will begin with the action of the authorities in England.

"The Secretary of State has expressed his general approval of the draft Indian Bill which this Government put in circulation last year; but, with reference to our suggestions for parliamentary legislation, he has forwarded to us for our information certain correspondence which has taken place between the India Office and the Board of Trade as the department in charge of English bankruptcy administration. The Board of Trade see no objection to one of the draft Acts of Parliament which we sent home, but raise a further question as to the desirability of

obtaining a general enactment which should enable the Courts of the United Kingdom or any of the British colonies or possessions to give effect to the provisions of the bankruptcy laws of any other part of the British empire, as is now the case under certain sections of the English Bankruptcy Act (sections 117-119) with regard to the different portions of the United Kingdom. The Board also suggest the advisability of obtaining power to extend section 14 of the English Bankruptcy Act, with a view to enabling a Court in any part of the British empire to suspend bankruptcy or insolvency proceedings before it, if in its opinion those proceedings could be more satisfactorily conducted in another Court.

"On these points the Board of Trade have been consulting the Colonial Office, and promise a further communication when the replies from the Colonial authorities have been received.

"Now I quite agree with the Board of Trade about the expediency of giving inter-colonial and imperial effect to the bankruptcy laws of the different parts of the British empire; and if the suggestions made by this Government eventually result in legislation which will not only enable the Calcutta creditor to have his decrees enforced and the property over which he has claims to be easily realized at Singapore, Hongkong and Melbourne but will confer similar advantages on creditors in the Straits Settlements, Australia and elsewhere, we shall have fairly earned the gratitude of our colonial friends. But legislation which is to give satisfaction to all the scattered colonies and dependencies of the British empire will take time, and it is hardly fair to ask India to wait until all other parts of the empire are agreed about what they want.

"I think therefore that our best course will be to pass without further delay as good an Act for India as we can, and then to ask the Secretary of State and Parliament to pass such supplementary legislation as will suffice for Indian requirements, without prejudice to any more general enactment extending to the whole empire which it may be found expedient or practicable to pass hereafter. I have no doubt that Parliament would appreciate the reasonable character of such a request. We should, I believe, have a better chance of getting a confirming than an enabling Statute, and I think I see my way to avoiding some of the difficulties which had occurred to me last year as likely to arise out of confirmatory legislation.

"Passing now from what has been done in England to what has been done in India,—the draft Bill, with the accompanying papers, was published in the Gazette and circulated among Local Governments for opinion in the course of last

June. I had hoped that the replies might be received in time to admit of my introducing the measure in the course of the last Calcutta session, but the last and most important of them did not reach me until March, and consequently I have been compelled to defer the present motion until after the return of the Council to Simla. It would be impossible to prepare a satisfactory measure on the subject of the Bill without the active co-operation of those who are conversant with the practical working of the insolvency law in the Presidency-towns, and I have to express my sincere thanks to those gentlemen who have been good enough to study the draft Bill, and to offer suggestions and criticisms on its provisions. I have found specially useful the report of Messrs. Wilson, Pigot and Trevelyan, who constituted the committee of Calcutta Judges appointed by the High Court to consider the draft, the note by Mr. Macgregor, who is the Official Assignee at Calcutta, the report of the Bombay Chamber of Commerce, and the note by Messrs. Farran and Turner, the Acting Prothonotary and the Official Assignee at Bombay.

"The Bombay Chamber of Commerce tell us that before discussing the detailed provisions of the draft they had to consider two broad questions—first, whether in the existing state of things a new Insolvency Act was called for; and secondly, whether in that event the general principles of the proposed Bill were thoroughly adapted to the requirements of the trading community and to the conditions attending insolvency in India. To the first question, we are informed, the reply was unanimously in the affirmative. 'The necessity,' says the report, 'of a radical reform in the bankruptcy law for India has long been keenly felt by the mercantile public, and has on numerous occasions been the subject of anxious consideration. In the address with which the Chamber had the honour to welcome the arrival in India of His Excellency the Viceroy the matter was prominently mentioned as one of pressing importance; and had it not become known that the Bill now under report was in preparation, it was the intention of the Chamber to memorialise Government begging that action might be taken at the earliest possible opportunity.'

"The second question, they say, did not admit of so ready an answer. The difference between the causes and circumstances of English and Indian insolvencies, they remark, is so great that at first sight the mere fact of the Bill being drawn on the same lines as an English Act carries with it a presumption of possible unfitness. But a closer examination of its provisions, they go on to say, shows that in its leading principle of official control over bankrupt estates it is in a great measure a return to what has long been recognized

as one of the best features of the present Indian insolvency law, and it is on this ground that I understand the Chamber to return an affirmative answer to the second as well as to the first of the questions which they had raised. In the revised version of the Bill it will be found that this feature of official control, to which the Bombay Chamber so justly attach importance, is a good deal more emphasized than in the draft which was circulated last year.

"It is fair to say that one of the Bombay authorities,—Mr. Hart, Chief Judge of the Bombay Court of Small Causes,—taking his stand on the differences between England and India, draws another conclusion from that arrived at by the Chamber of Commerce, and questions altogether the desirability of applying the principles of the English Bankruptcy Act to India. If the measure which I am asking leave to introduce were to apply to India generally, there would be very great force in his criticisms; but it must be borne in mind that the present measure is only intended to extend to the Presidency-towns and to a few other places where the conditions of insolvency resemble much more closely those existing in England than they do in the Mufassal.

"Among the differences between English and Indian conditions to which the Bombay Chamber direct prominent attention is the fact that imprisonment for debt has been abolished in England but not in India. Now on imprisonment for debt I have my own opinion. I believe that the system of imprisonment for debt as such (I am not speaking of cases where indebtedness involves an element of fraud) is bad for the creditor, bad for the debtor and bad for the country at large. I know that this opinion is shared by some of my colleagues, in particular by my friend Mr. Hope, who has on more than one occasion delivered his soul on this subject with much effect, and it is strongly supported by some papers which have been sent to us from Burma with reference to the present Bill. Moreover, some interesting reports on the law of foreign countries which Sir H. Maine was kind enough to have collected for me, and which were published in the *Gazette of India* last year, show that this is the view to which the legislatures of all civilized countries are tending, and at which most of them have arrived. But when Indian authorities were consulted on this subject some four or five years ago there was very great divergence of opinion about it, and a large number of persons, whose opinion, from their position, their experience and their knowledge of the country, is entitled to the greatest weight, were strongly opposed to the abolition of imprisonment for debt. In fact, it appeared that Indian opinion generally, both official and unofficial, was not yet ripe for any such change, and that, under existing circumstances, it would be useless for me or for any one else to

propose any such alteration of the law affecting India generally. Whether we should not be justified in proposing legislation confined in its scope to a particular province where the balance of authoritative opinion is in favour of change, is another question into which I will not enter now.

"But, so far as the present Bill is concerned, I yield to the opinion of the Bombay Chamber, which I fear would be endorsed by Chambers of Commerce elsewhere, that it would be unadvisable as yet to deprive creditors of the power of imprisoning for debt. Accordingly the present Bill has been prepared on the assumption that imprisonment for debt is to be retained. There is no doubt some little difficulty in adapting the provisions of the English measure to a country where imprisonment for debt still remains, but the difficulty is not insuperable, and I think that it may be surmounted by means of a few adjustments and adaptations, in addition to those which appeared in last year's draft.

"Before I leave the Bombay papers I will refer to one other point which is of considerable importance in a province like Bombay, where British territory and Native States are much intermixed and interlaced. The Bombay Chamber remark that, so far as Bombay is concerned, one of the greatest disadvantages which creditors have to contend with is the facilities which fraudulent debtors have for escaping from the jurisdiction of the Court by absconding into Native territory. Among a certain class of native traders, they say,—and that by no means the lowest,—this is a very common means of evading punishment, and, owing to the ease with which it can be accomplished, it tends greatly to encourage fraudulent bankruptcy. Once make it possible, they urge, for the writ of the Bankruptcy Court to take effect in Native States, and reckless trading will have received a death-blow which no other form of legislative enactment could administer. The Chamber frankly admit the difficulties attending their proposal; but I am not sure that they have fully realized that the suggested remedy is one which it is beyond the competency of the Indian legislature to apply. We can, by legislation in this Council, provide for the arrest of debtors about to abscond from British into native territory, and I propose to do so by the present Bill. We cannot, by legislation in this Council, make the writs of our Bankruptcy Courts run in Native territory. If further facilities than those which now exist are to be given for executing British writs in Native territories, they must be given by means of executive arrangements carried out through the agency of the Foreign Department. The question whether such facilities could be given was a good deal discussed in the years 1867 and 1868, and was eventually decided in the negative, in accordance with the strongly expressed

opinion of the Bombay Government of that day. If the present Bombay Government can see their way to meeting the objections which 18 years ago were considered fatal to the adoption of proposals similar to those now put forward, I feel sure that the Government of India will gladly co-operate in taking such action as may be practicable for preventing Native States from being converted into Alsatias for fraudulent debtors.

" I will now turn to the Calcutta criticisms. The Committee of Calcutta Judges and the Official Assignee, Mr. Macgregor, have gone through the draft Bill clause by clause, and have made some most useful suggestions, the majority of which I propose to adopt. The point to which they attach most weight is one to which I have already adverted, namely, the importance of maintaining strict official control over Indian insolvencies, and the impossibility in almost every case of administering an insolvent estate in this country through the agency of the creditors and a trustee appointed by them. To this view I fully assent. The reason why I thought that the English Bankruptcy Act of 1883 could be more easily adapted to the circumstances of this country than its predecessor was because it involves a return to the principle of official supervision. The Act bears on the face of it signs of its being a compromise between two views—the view embodied in the Act of 1869 that the administration of debtors' estates should be left as much as possible to the creditors themselves, and the view that official supervision is indispensable to prevent waste and scandal. The administration is given to a person who is called the trustee, and who is supposed to be appointed by and to act in consultation with the creditors; but he is not given nearly as free a hand as under the old Act, and every inducement is offered to employ official rather than voluntary agency, especially in the case of small estates. The draft Indian Bill which was published last year reversed the presumption underlying the English Act, and proceeded on the view that the employment of the Official Receiver (or, if we retain the existing Indian term, the Official Assignee) would be the rule, and the employment of a creditor's trustee the exception. And, after hearing the very forcible objections which have now been urged to the administration of insolvent estates in India through trustees and committees of inspection, I think it would be safe and proper to go a good deal further in the direction of official control than I had originally proposed. It appears from the Calcutta papers that, although power is given to the Court by a section of the Indian Insolvency Act to order the election of assignees by the creditors, this power has rarely, if ever, been exercised, and, as far as the Calcutta Judges can ascertain, in only one case in recent years have creditors applied to the Court for an order under this section. In view of this

evidence as to the decided preference of creditors themselves for official administration, I propose in the revised draft to incline the balance a good deal further in the official direction by omitting the machinery of committees of inspection, and by reducing to much smaller compass the parts of the Bill relating to formal meetings of creditors, and to the duties and liabilities of trustees appointed by the creditors, the assumption being that those provisions will be only of exceptional application.

"I also propose, as I have said before, to meet another Calcutta criticism by giving the Court power in certain cases of exercising jurisdiction over up-country debtors.

"I reserve for the introduction of the Bill any more detailed explanation of its provisions, and will merely add that I fully assent to what Mr. Macgregor says with regard to the propriety of safeguarding the interests of existing establishments. The only reason why clauses on this subject were not inserted in last year's draft was because I thought they would be best settled after consultation with the persons immediately affected by them.

"This then is the general character of the Bill which I propose to introduce. Having regard to the small number of insolvencies which come before the Courts of the Presidency-towns, and to the extremely petty character of the transactions out of which those insolvencies ordinarily arise, the scope of the measure will be very limited, and I have no desire that it should be extended. Personally I am disposed to agree with the opinion of the Officiating Recorder of Rangoon that if imprisonment for debt were abolished there would be very little insolvency business in India, or that at all events it would be confined to *bonâ fide* trading bankruptcies.

"But until the time is ripe for a more heroic remedy I can offer no better solution of the problem of providing an insolvency law for the centres of Indian commerce than that which is embodied in the measure which I hope shortly to lay before the Council."

The Motion was put and agreed to.

The Council adjourned to Thursday, the 13th May, 1886.

S. HARVEY JAMES,
Offg. Secy. to the Govt. of India,
Legislative Department.

SIMLA;
The 7th May, 1886.

G. C. B. Press, Simla.—No. 59 L. D.—7-5-86—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 20th May, 1886.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.
His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E., V.C.
The Hon'ble C. P. Ilbert, C.S.I., C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble T. C. Hope, C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.
Colonel the Hon'ble W. G. Davies, C.S.I.

INDIAN BANKRUPTCY BILL.

The Hon'ble MR. ILBERT introduced the Bill to amend and consolidate the Law of Bankruptcy and Insolvency in British India, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir S. Bayley, the Hon'ble Messrs. Evans and Steel, the Hon'ble Rao Saheb Vishvanath Narayan Mandlik and the Mover. He said:—

"Although I am now nominating the Committee on this Bill, I do not propose that the Committee should begin its sittings until after the Government has returned to Calcutta. But I hope it will be arranged that such further suggestions and criticisms as we may receive will reach us in ample time to allow of their being considered in the Legislative Department before we leave Simla, so that no time may be lost after our return to Calcutta.

"I have already said that the Bill follows generally the arrangement and lines of the English Act, and I will take this opportunity of explaining the most important points of difference between the two measures.

"The Indian Bill is given as extensive an operation, local and personal, as can be conferred on it by this legislature. In order to obtain for it further opera-

tion in Her Majesty's dominions beyond India we must go to Parliament: in order to obtain for it further operation in Native States within India we must rely on executive arrangements with the rulers of those States. The Local Governments will, I feel sure, appreciate the importance of considering how far it may be practicable to make and give effect to such arrangements.

"The acts of bankruptcy enumerated in the Indian Bill are not precisely identical with those specified in the English Act. It would not be desirable in India to make the mere levy of execution an act of bankruptcy. On the other hand, it is suggested in some of the papers on the draft Bill that it would be desirable to retain some of the acts of bankruptcy recognized in the existing Indian Act. I have adopted this suggestion, and have also made some further modifications of and additions to the corresponding English section which have been suggested by the working of the Act in England.

"The Court will not ordinarily exercise jurisdiction on a bankruptcy petition unless the debtor is either in prison for debt within the limits of the ordinary original jurisdiction of the Court, or he or his partner resides or has a place of business within those limits. But for the purpose of empowering the Court, in exceptional cases, to deal with up-country debtors, I have qualified these restrictions by two provisoes, of which the first enables the Court to transfer before itself and dispose of under the bankruptcy law any case of indebtedness which may have been brought before an inferior Court under the Insolvency chapter of the Civil Procedure Code; whilst the second empowers the Court in classes of cases to be defined by rules to exercise jurisdiction notwithstanding the restrictions imposed by the earlier part of the section. It will be for the High Courts to consider whether these provisoes will suffice to give them the requisite power of dealing with such cases. I have myself some doubt about the necessity for the second proviso. And I do not contemplate that a High Court should, under it, attempt to deal with cases arising outside its own province. If, for instance, the High Court at Calcutta were to exercise jurisdiction in a Cawnpore case, it might bring itself into conflict with the High Court at Allahabad. Should it be found desirable to deal under the bankruptcy law with any classes of indebtedness arising at Cawnpore, probably the most convenient mode of doing so will be to confer on the Allahabad Court a bankruptcy jurisdiction subject to such limitations as may be found expedient. This could be done under section 79 of the Bill.

"It has been suggested that the application of the Insolvency chapter of the Civil Procedure Code to the High Courts of the Presidency-towns should be

barred. But it is possible that this chapter may still be needed for cases where the total amount of the debtor's liabilities does not amount to Rs. 500, and I think it will be sufficient to give full power to stay proceedings under the Code where concurrent proceedings are being taken under the Act. Such a power is given by section 9 of the Bill.

"Under ordinary circumstances, where the petition is presented by the debtor, the Court will make an order as a matter of course, but it need not make an order in cases where in its opinion the proceedings ought to have been taken before some other Court having jurisdiction (section 7). Unless this qualification were made, a debtor against whom proceedings have, quite properly, been taken in Calcutta might, to the great inconvenience of his creditors, get himself adjudged bankrupt at Bombay by migrating and petitioning there.

"The order to be made on a bankruptcy petition is in the Bill, as in the English Act, called a receiving order. The effect of a receiving order is not quite the same as that of a vesting order under the existing Indian Act. A receiving order transfers the possession of, but not the property in, the debtor's estate: the debtor is not divested of his estate unless or until he is adjudged bankrupt. An interval was designedly allowed by the English law for the purpose of enabling a debtor to escape the consequences of bankruptcy by making suitable arrangements with his creditors under the control and supervision of the Court; and although the adjudication of bankruptcy may, and in many cases will, follow immediately on the receiving order (see section 20), yet I think it is desirable that we should follow the English law by making it possible for an interval to elapse between the two stages. The person who is constituted receiver under the order, and to whom the possession of the debtor's property is given, is the official assignee, who, however, may appoint a special manager in cases where he thinks it expedient to do so.

"One important effect of a receiving order under the Bill, as now revised, is that the debtor, if in prison for debt, is thereupon released. It might be objected that, inasmuch as an imprisoned debtor can obtain a receiving order on his own petition, this provision nullifies the law of imprisonment for debt. But if the Bill is carefully examined it will be found that this objection is not really valid. The state in which a debtor will find himself on being released from prison under a receiving order will be very far removed from a state of liberty. He will remain at the beck and call of the official assignee, who is invested with inquisitorial powers over his person and property, and on whom he has to dance attendance whenever required (see section 22).

If he attempts to escape or evade the requirements of the law, he is liable to be summarily committed to prison. Such a situation, though inconvenient to persons fraudulently disposed, need present no terrors to the debtor who is honestly anxious to assist in the realization and distribution of his estate, and will give a much better chance to the creditors generally than the present law, under which the debtor usually strikes a bargain with some favoured creditor as to the terms on which he is to obtain immunity from arrest or be released from prison if arrested. Precautions are also taken against allowing the proceedings to slumber after the debtor has obtained the protection given him by a receiving order. The Court has power either to rescind its order (section 88) or to give the carriage of the proceedings to the official assignee (section 91).

"Under the English law the first step consequent on a receiving order is to summon a general meeting of the creditors. Under the Indian Bill such meetings need not be summoned except under directions from the Court or the official assignee or in pursuance of a requisition from a specified proportion of creditors (see section 17, and First Schedule, Rule 4). But the debtor is required to make at once full discovery of his estate and liabilities, and it will be then for the creditors to consider, with the assistance of the official assignee, whether any proposal which the debtor may make for a composition or scheme of arrangement should be entertained, or whether the debtor should not be adjudged bankrupt. The main provisions of the English Act with respect to the public examination of the debtor have been retained, and, although they may involve revelations which are not always pleasant to creditors, I think it is desirable in the interests of justice that they should be retained. We must be very careful against giving facilities to creditors for smothering up doubtful transactions.

"Where a debtor is adjudged bankrupt, his property is thereby vested, not, as under the English Act, in a trustee appointed by the creditors, but in the official assignee, to whom possession will already have been given under the receiving order. If the creditors desire to substitute a special assignee of their own nomination, they must take proceedings for doing so under Part V of the Bill. But it would appear from what has been said by the Calcutta Judges that such proceedings are not likely to be of frequent occurrence.

"The Official Assignee will not be assisted or hampered by any committee of inspection, but he will, as I have already said, be given extensive powers of inquisitorial control over the person and property of the debtor. I agree with Mr. Macgregor that such powers ought to be given, and I think he will

find that the provisions of the Bill will be sufficient to remove the risks and impediments which the official assignee experiences in the performance of his duties under the existing law. If section 25 of the Bill is compared with the corresponding section of the English Act, it will be found that I have ventured to confer on the official assignee somewhat larger powers of discovery than are given by the English law.

"The provisions of the Bill with respect to the bankrupt's discharge—by which is meant his discharge from liabilities, not his release from prison—follow closely those of the English Act, with one or two modifications suggested by Indian circumstances. I think that for the purpose of obtaining recognition of our proceedings in other parts of the British dominions it is important that on this point the English and Indian law should be substantially identical.

"I have added to the Bill a Part corresponding to Part II of the English Act, which disqualifies bankrupts for holding certain public offices. Similar disqualifications are already imposed by the several Indian Acts relating to municipal and other local authorities, but I think it is convenient that they should be gathered up and generalized in a Bankruptcy Act.

"In Part III of the English Act, which contains the rules for the administration of the debtor's estate, I have not deviated from the English Act except so far as is necessary for the purpose of meeting the peculiarities of Indian circumstances. Thus, the provisions as to execution are made to square with those of the Civil Procedure Code; the custom of paying rent monthly is recognised by limiting the landlord's right of distraint after bankruptcy to one month's rent; the language of one of the sections is so modified as to allow a debtor to retain, as necessaries, not only his clothes, bedding and tools, but the cooking-pot which is so indispensable to an Indian; and the power of attaching salaries and pensions is limited with reference to the provisions of the Civil Procedure Code and of the Indian Pensions Act. The Calcutta Chamber of Commerce, in a paper which has only reached me within the last week, have renewed a suggestion which was made some years ago that the section relating to reputed ownership should be amended to meet a reported Calcutta case (*Gubboy* v. *Miller*, I. L. R. 6 Cal. 633). But I agree with the judicial authorities who considered the same suggestion in 1881 that it would be extremely dangerous to meddle with this very difficult clause, and that our safest course is to follow the English law. I am, however, disposed to agree with the Official Assignee at Calcutta that some further provision is required to prevent persons from trading on the credit of property which is in their possession but which does not really belong to them, and that for this purpose it may be desirable to legislate on the lines of the English Bills of Sale Acts, by requiring mort-

gages of moveable property to be registered, at all events, in certain classes of cases. My chief doubt is as to whether and how far transfers of moveable property should be recognized at all unless accompanied by possession. But in any case such legislation as is required would be most conveniently embodied in an enactment separate from the Bankruptcy Bill, and we are now considering in the Legislative Department what form it should assume.

"Part IV of the Indian Bill contains such of the provisions of Parts IV and V of the English Act as appear applicable to the official who will in almost every case discharge the functions both of the official receiver and of the trustee under that Act. I propose to retain for this official the title of official assignee which he now bears under the Indian Insolvency Act, and which apparently he wishes to continue to bear. I believe that the chief reason why the term 'official assignee' was not used in the last English Bankruptcy Act was that it was not desired to revive certain associations which had gathered round the official assignees appointed under earlier Acts, and it was thought that the official administrator might smell more sweet under another name. I am glad to think that the titles of the existing Indian assignees do not call up similar associations, and to hope that the actions of their predecessors smell sweet and blossom in their dusty surroundings. I have inserted a saving (section 58 (3)) for the rights and interests of the gentlemen now acting as official assignees, and when the Bill is in Committee I dare say that they will help me to see that this saving does all that is required. With respect to the mode in which the official assignee is to keep his accounts and make his payments and investments, I am anxious to make no greater change than is necessary in so much of the existing rules and practice as may have worked well, but it seems to be desirable as a matter of principle that money received on account of bankruptcy estates should, like money received by ordinary Civil Courts, be paid into a Government treasury or into a bank conducting treasury business for the Government, in order that there may be the security of the Government for its safe custody, and that the safeguards against the occurrence of error provided by the rules of the Government with respect to payments from Government treasuries may be brought into operation. In framing the clauses on this subject which I have inserted in the Bill, I have had the assistance of Messrs. Barbour, Westland and Hardie, all of whom are, I believe, of opinion that they will not fetter the official assignee in any unnecessary shackles of red tape.

"I need not dwell on Part V of the Bill, which relates to special assignees, and the provisions of which are not likely to be much used.

"Part VI of the Bill deals with the constitution, procedure and powers of the Courts which are to exercise jurisdiction under this measure. These Courts will

be the High Courts of the Presidency-towns, the Recorder's Court at Rangoon, unless that Court is merged in a Chief Court before this Bill comes into operation, and any other Courts on which it may be found convenient to confer bankruptcy jurisdiction. It may possibly be desirable to confer such jurisdiction on the Courts at such places as Allahabad, Lahore or Karáchi, and the Bill has been so framed as to admit of the jurisdiction thus conferred being limited to particular classes of cases. Power is given to each of the High Courts at the Presidency-towns to delegate part of the bankruptcy jurisdiction either to a Small Cause Court Judge or to an officer of its own. I understand that the former arrangement is preferred at Madras, and the latter at Calcutta and Bombay.

"Part VII of the Bill, like Part VII of the English Act, enables the provisions of the law to be modified and simplified in the case of small bankruptcies. I have nothing to say about this Part, except that I am inclined to think that the pecuniary limit fixed for small bankruptcies might be raised.

"Part VIII of the Bill, following the English Act, contains stringent provisions for the punishment of fraudulent creditors and debtors. Suggestions have been made for adding to the list of offences dealt with by this Part of the Bill, but I think it will be found that provision has been made either by this Part of the Bill or by the Penal Code for all the offences which need be covered.

"Last of all comes a Part containing supplemental provisions, near the end of which will be found a clause for the distribution of certain unclaimed dividends for which creditors have not proved, and which appear from the note furnished to me by Mr. Turner, the Official Assignee of Bombay, to have been accumulating for some time in the Bombay Insolvency Court, and to amount there to some two lakhs or more. Mr. Turner has also referred in his note to a question which has been raised about the validity of certain rules under which the interest on unclaimed or undistributed assets has been applied towards defraying charges connected with the administration of insolvent estates. But if, and so far as, the validity of those rules is open to question, the doubt can only be set at rest by Parliamentary legislation, which would, I feel sure, be granted if necessary, and accordingly I have not dealt with the point in the present Bill.

"With these explanations, which have necessarily been of a somewhat technical character, I commend the Bill to the favourable consideration of the Council."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

INDIAN MUSEUM BILL.

The Hon'ble SIR S. BAYLEY moved for leave to introduce a Bill to alter the constitution of the body corporate known as the Trustees of the Indian Museum, and to confer certain additional powers on that body. He said:—

"The matter with which this Bill has to deal is, practically, a small executive arrangement, which it becomes necessary to trouble the Council with; because the constitution of the Trustees of the Indian Museum was itself settled in a somewhat elaborate form by an Act of the legislature—XXII of 1876. The special object of this Bill is to give effect to an arrangement which had been come to by the Government of Bengal with the Trustees of the Museum and with the sanction of the Government of India. Apart from the collections in the Indian Museum, the Government of Bengal have for some years been gathering together a valuable Economic Museum, which was considerably assisted by the Revenue and Agricultural Department with a view to the Calcutta Exhibition of two years ago. They have also got an ethnological collection, a collection of Indian Art-ware and a Fine Art collection. These have all been under separate management under the Government of Bengal. There has been a good deal of difficulty in finding for them a proper local habitation and in arranging for their proper maintenance and custody and for their being available to the public. An arrangement has now been come to by the Government of Bengal with the Trustees of the Museum that all these collections shall be brought under the maintenance, control and administration of the Trustees of the Museum. But in order that the wishes of the Government of Bengal with respect to these collections—of which the property remains with them although the administration will be in the hands of the Trustees—in order that the Government of Bengal may have a proper amount of influence in their management, it is necessary that they should be represented on the body of the Trustees. At present they are not so represented. For this purpose it becomes necessary to alter the number of Trustees at present regulated by the Act of 1876. The Trustees under that Act are sixteen in number; three of them are *ex officio*, namely, the Accountant General, a Secretary to the Government of India, and the Superintendent of the Geological Survey. Five of the Trustees are appointed by the Government of India; five represent the Asiatic Society; and

the other three are elected by the general body of the Trustees. That is the present constitution. It will now be altered under the proposed Bill, and the number of Trustees will be twenty-one. Of the *ex officio* Trustees, only one, the Accountant General, will remain; the Government of India will still nominate five; the Asiatic Society will still be represented by five; and the new feature in the case is that the Government of Bengal will nominate five Trustees on its own account, and this united body will elect five additional Trustees to act with them.

"These are the main alterations of the constitution of the Trusteeship.

"The Bill will also enable the Trustees to deal with those collections which will be under their administration, although not their property; and the Bill will also provide for a subsidiary matter, which is that the Trustees shall have the power to make over to the Government of Bengal certain land attached to the Museum, in order that the Government of Bengal may thereon provide the accommodation which becomes necessary to meet the additional responsibilities which the Trustees of the Museum now take upon them."

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES RENT ACT, 1881, AMENDMENT BILL.

The Hon'ble MR. ILBERT presented the Report of the Select Committee on the Bill to amend the North-Western Provinces Rent Act, 1881.

NORTH-WESTERN PROVINCES LAND-REVENUE ACT, 1873, AMENDMENT BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to amend the North-Western Provinces Land-revenue Act, 1873.

The Council adjourned to Wednesday, the 2nd June, 1886.

S. HARVEY JAMES,
Offg. Secretary to the Govt. of India,
Legislative Department.

SIMLA;
The 21st May, 1886.

G. C. B. Press, Simla.—No. 95 L. D.—24-5-86—201.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Viceregal Lodge, Simla, on Wednesday, the 9th June, 1886.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*

His Honour the Lieutenant-Governor of the Punjab, LL.D., K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E., V.C.

The Hon'ble C. P. Ilbert, C.S.I., C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble Sir T. C. Hope, K.C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

Colonel the Hon'ble O. R. Newmarch.

The Hon'ble J. W. Quinton.

The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

Colonel the Hon'ble W. G. Davies, C.S.I.

The Hon'ble Rana Shankar Bakhsh Singh Bahadur, C.I.E.

OUDH RENT BILL.

The Hon'ble MR. QUINTON moved that the Bill to consolidate and amend the law relating to rent in Oudh be referred to a Select Committee consisting of the Hon'ble Mr. Ilbert, the Hon'ble Sir S. Bayley, the Hon'ble Sir A. Colvin, the Hon'ble Mr. Hunter, the Hon'ble Rana Shankar Bakhsh Singh Bahadur and the Mover. He said:—

"I had intended, in accordance with the wishes of the Government of India and that of the North-Western Provinces and Oudh, to make this Motion during the last Calcutta session, but was prevented from carrying out my intention by the unfortunate illness of our hon'ble colleague Rájá Amir-ud-dowlah Bahadur. It was obviously desirable that in discussing the principles and provisions of this Bill the Council should have the assistance of a representative of the taluqdárs, whose interests are largely affected by it. And in fairness to them the Motion was suspended in the hope that the illness of Rájá Amir-ud-dowlah would be but of short duration. Unhappily my hon'ble friend is still unable to attend our meetings. In his temporary absence the

Legislative Council has been reinforced by the addition of Rana Shankar Baksh Singh, Vice-President of the Taluqdárs Association and owner of a large taluqa in Southern Oudh, whose knowledge and experience will, I have no doubt, be of great value to us in carrying the Bill through its remaining stages. I hope also that we may still have the benefit of Rájá Amir-ud-dowlah's attendance either here or at the consultations on the Bill which Sir Alfred Lyall hopes to hold at Lucknow before it is finally read.

"The interval that has elapsed has given members an opportunity of making themselves acquainted with the contents of the lengthy papers which have been printed and circulated, and of appreciating the motives and reasons which have induced Government to recommend legislation on behalf of the Oudh tenantry. It has also enabled the taluqdárs to assemble and discuss the measure, and to inform the Local Government of their views respecting it. When moving for leave to introduce the Bill I dwelt at some length on the necessity for legislation of the nature proposed, and even at the risk of repetition I shall again briefly invite the attention of Council to the prominent facts which in the opinion of the Government leave it no option in the mattter.

"The province of Oudh is very densely populated; the bulk of the population live by agriculture, manufactures being few and inconsiderable; 79 per cent. of the cultivated area is occupied by tenants-at-will holding farms averaging something under five acres, and liable to annual enhancement of rent and to eviction at the mere will of the landlord; and of the total number of cultivators only one in 200 enjoys any protection against these incidents of tenure. The landlords consist of 346 taluqdárs and 180,000 proprietors of the zamindári class. Tenants with rights of occupancy under the Oudh Rent Act are 8,117, and tenants-at-will 1,800,000. During the last 15 years there has been a rise of rents which varies in different districts but averages for the province 24 per cent., the average rise of prices during the same period having been about the same. The power of ejectment has been freely exercised by the landlords, the number of notices having risen from 23,600 in 1876 to 92,602 in the current year. An examination of 28,477 tenancies in different districts made three years ago showed that of that number there were only 5 per cent. in which the component fields and the rent had remained materially unchanged during the last fifteen years, and that in 46 per cent. the tenants were all new-comers. The provisions of the existing law which allowed tenants to claim compensation for improvements on enhancement of their rent have remained a dead-letter, and those which gave a similar right on ejectment have been largely evaded by contracts.

"When bringing these facts to the notice of Council I stated that they showed that the cultivation of the soil was carried on by a body of raiyats holding under a tenure which might be described as a yearly tenancy in its simplest and most rudimentary form, and I declined to waste your time by attempting to prove, what is notorious to all who have thoughtfully considered the subject, that this form of tenure when the pressure of population is severe is the one most discouraging to agricultural efficiency and most likely to lead to the impoverishment and degradation of the cultivators of the soil.

"It has, however, been urged as an objection to the Bill that the condition of the tenantry has, on our own showing, improved, and that we have made out no case to justify legislation. On this point, I am quite prepared to join issue.

"As regards the improvement in the condition of the tenantry, special causes have been at work to bring about this result, the continued operation of which can no longer be relied upon. The substitution of the British for the Native Government after the pacification of the province enabled every man to enjoy the fruits of his industry in peace, and thereby gave a great stimulus to production. Good roads were everywhere opened out, and of late years railways have brought tracts hitherto practically inaccessible within reach of the markets of the East and West. The cultivation of waste land has extended with great rapidity. The latest returns available give reason for believing that the increase since settlement is some 20 per cent. These causes have efficiently promoted the prosperity of the province, and have enabled the tenantry, whose rents were largely regulated by custom, to share in it.

"But, as I have already stated, they cannot be expected to give rise to the same progress in the future as they have done in the past.

"The establishment of our Government substituted for the good old rule of each party taking and keeping what he could a strict reign of law, which affords security to landlords as well as tenants, but arms the former with the whole power of an irresistible Land Act, and, as always happens in such cases, gives the advantage in the struggle to the richer and stronger of the two parties. A generation has grown up accustomed to the benefits of British government; the main lines of roads and railways throughout the province have been completed; the area of culturable waste land is rapidly diminishing and customary rents are fast disappearing. We have reached the summit of the watershed, and have to guard against a facile descent in the

opposite direction. Moreover, the progress testified to by no means excludes exceptional cases of great hardship, which tend to increase in number.

"Here I may fitly reproduce a passage from the report of Mr. (now Sir) H. Davies quoted by Mr. Strachey when introducing the present Oudh Rent Act in 1867 :—

'The doctrine that rents paid by labourers raising their wages from the soil cannot safely be exposed to competition, as expounded by Mr. J. S. Mill, is now generally accepted by political economists. It is seen that a rapidly increasing population is soon straitened for food, that they will contend fiercely among themselves for the payment of the rent of land from which alone in a purely agricultural country they can extract it; that such contention, whilst nominally and transiently raising rents, must lead to impoverishment and reduced wages; that with increasing poverty the secondary wants necessarily diminish, self-respect vanishes, whilst the multiplication of numbers is accelerated; that the end is to the landlord a shrunken rent-roll and deteriorated property; to the country a degraded and desperate peasantry. It is admitted, on the other hand, that rents paid by capital may safely be left to competition, that sensitive fund giving timely and early warning of over-exaction to the investor. Contending, not for bread, but for the fair interest of his money, he, unlike the starving cultivator, can and will separate from the soil. Whence is suggested an answer to the question often asked 'why allow competition for grain and not for the rent of land paid by peasants?' Because competition for grain has no tendency to multiply the number of mouths to be fed; but, by adjusting its price in proportion to the supply, rather puts people on their thrift; whereas competition for rackrent leases, by encouraging false confidence, by eventually lowering wages, and by minimising the prudential checks, has a direct tendency to stimulate the increase of population and in course of time to lessen the fund for its support.'

"This is a forcible statement of an economic deduction the soundness of which is unassailable. If any one wants an inductive proof of the proposition, he has but to study the history of the land question in Ireland for the last 50 years, and to consider the results there brought about by the operation of competition rents on a teeming agricultural population.

"I would ask Your Excellency and hon'ble members bearing in mind this theoretical argument to weigh the facts stated in the following passages from Major Erskine's report :—

'126. Although I am able to say that the condition and prosperity of the cultivating classes as a body have not yet been injuriously affected under the administration of Act XIX of 1868, I cannot regard the numbers of those classes, the size of their farms, the incidence of the rent they pay and the insecurity of their tenure without feeling that, as the inevitable multiplication of their numbers proceeds and competition for the land becomes more keen, their condition will under the present law deteriorate, and that it is advisable to take some

action on their behalf. And I am strongly of opinion that any remedial measures which are adopted should be such as will protect all cultivating tenants as a body, and not merely those of certain castes or classes, those who are descended from former proprietors or those who have been in occupation for certain periods arbitrarily fixed. Interference is justified on the broad ground that it is imperatively necessary in the interests of the general community that the complete efficiency of the agricultural industry be maintained, and that that efficiency is under present conditions seriously threatened.

'127. The ordinary tenant now holds from year to year; he is liable to be called on each year to agree to an enhancement of his rent on pain of summary eviction if he refuses the enhancement; and he is moreover liable to summary eviction at the end of any year at the mere caprice of the landlord. The landlord need not give him notice to quit until the 15th April; and, unless he is in a position to contest the notice, he must vacate the land by the 15th May or he may be forcibly removed. From all parts of the province it is said that landlords throw obstacles in the way of tenants seeking to make improvements, and withhold their consent to the construction of these works until the tenant contracts himself more or less out of the provisions of the Rent Act which secure him compensation. When the rent is a produce-rent, it is regulated by custom; but when it is payable in money it is mainly determined by competition, by which I do not of course mean that the lease of the tenancy or field is put up to auction (though even that is spoken of by the Deputy Commissioner of Unao), but that the landlord ordinarily takes as high a rent as he can get: it is to be feared that, except in rare instances, the landlord does not trouble himself to ascertain the relative productive capacity of his fields and to fix the rent of each on this basis; he treats the tenancy as a whole, and demands what he thinks the tenant will pay or what he thinks another man will give.

'128. Under a system which places him in such circumstances as are above described the Oudh peasant has little incentive to exercise self-denial, prudence and thrift. It may be true that even with greater security of tenure he would still be deficient in those characteristics; that he would still adhere to his old habits; indulge without restraint his sexual instincts and embarrass himself by extravagant expenditure on marriages, &c.; but at least he should be put in a position in which it would be to his plain advantage to be prudent and economical. Such a position he does not now occupy.'

"It has also been argued that the evils for the removal of which we propose to legislate are apprehended, not actual, and that until they come into existence legislation is unwarranted.

"If the evils were in themselves slight, or if the apprehensions of their approach rested on insufficient grounds, then no doubt there would be some force in the arguments; but I hope I have satisfied the Council that neither of these conditions exist in the present case, and that we have only too strong grounds to dread the approach of serious evils, and to believe that, if we do not interpose, their arrival at no distant date is a matter of certainty.

"If this be so, it is surely the duty of Government to take timely measures to keep out the deluge before the country is submerged—to lay by a store in the present plenteous years against the famine which awaits us. In homely phrase, prevention is better than cure. And measures adequate to ward off the disaster will fall far short of those necessary to remedy the calamities caused by it if we allow it to fall upon us.

"In this connection I would read to the Council an extract from a memorandum by Mr. Quinn, written when Commissioner of Sitapore, which is referred to in Major Erskine's report. Mr. Quinn is an officer of sound judgment and long experience in Oudh, and the division from which he wrote consists of one district the lowest as regards density of population, and of two in which the population to the square mile is under the provincial average :—

'I myself am convinced that the keen competition for land which is essential to rack-renting is only commencing, but will rapidly develop. Twenty years hence the whole of the culturable land in Oudh will probably be under cultivation. An ejected cultivator will then become a ruined man. I would earnestly protest against waiting till the cultivator has reached the destitute condition of the Bengal (he might more fitly have said *Behar*) raiyat, and till landlords have come to live up to an unduly inflated income. Now, when class animosities have not sprung up between landlord and tenant, and when the cultivator is still fairly prosperous, is the time for such a moderate reform of the rent law as may ward off the evils which the backward state of Oudh has alone hitherto kept in check.'

"In Southern Oudh, where population is more dense and the area of waste land is much smaller, the state of things dreaded by Mr. Quinn is within very measurable distance, competition rents are rapidly superseding those regulated by custom, and in one district there has been a rise of 49 per cent. in rents in 15 years.

"No candid observer of these facts can accuse the Government of precipitation in initiating the present proposals.

"I stated in my speech on the introduction of the Bill that most of the taluqdárs were understood to admit that under the circumstances some amendment of the existing law in the direction of the draft Bill is expedient, necessary and inevitable, and that I had grounds for anticipating that they would acquiesce in a measure of this kind. Since that speech was made the taluqdárs have met and considered the Bill, and in their corporate capacity have accepted its main principles. This acceptance was intimated to His Honour the Lieutenant-Governor in a reception of taluqdárs held by him at Lucknow in the end of April, and was formally notified to the Secretary to Government in a letter of

the 24th of that month, giving cover to a memorial which will be found at page 9 of No. 2 of the printed papers on the Bill. As the memorial is short, I shall make no apology for reading it :—

'May it please your Honour,—We, the taluqdárs of Oudh, beg to submit a translation of the proceedings of a Meeting of the Committee of our Association held on the 22nd April, 1886, in deliberation on the Oudh draft Rent Bill, from which it will appear that we accept in their entirety the rules of seven years' lease and of the limitation of enhancement to 6¼ per cent. We, however, beg to suggest that land given on clearance lease, *banjar, jungle,* new alluvial land, *parti,* and land subsequently to this Bill rendered culturable by landlords at their own expense, should be exempted from the provisions of the above clauses.

'We would also, with due respect and deference, draw Your Honour's attention to sections 38 and 129 of the Bill, which, in our estimation, contain provisions derogatory to our position and rights, and which also are, in our opinion, unnecessary for the protection of our tenants. These sections we wish to see removed from the Bill.

'We further respectfully beg to be allowed to point out what seem to us certain defects and errors in the Bill, which we consider should be removed, and also to suggest some useful provisions which may be inserted therein.'

"It confirms what I then stated—and before going on with my argument I may add that on the points to which exception is taken we are prepared to allow the fullest weight to the objections consistent with securing the objects at which we aim, namely, moderate stability of tenures for the cultivator, and a reasonable assurance that the power of enhancement will not be pushed so far as to make that stability a nullity, for no tenure is worth fixing if the enhancement is severe.

"I have thus, I hope, successfully met the objection as to the absence of any necessity for legislating on behalf of the Oudh tenantry. I now turn to the provisions of the Bill as introduced.

"With the Statement of Objects and Reasons will be found printed a letter from the Local Government, giving reasons for the form which the Bill assumes, and for the various minor alterations proposed in the present Rent Act. I shall not trouble Council with recapitulating these on this occasion. They will be fully discussed in Select Committee, and such of them as are finally agreed upon can be referred to so far as is necessary when the Report is presented and taken into consideration.

"I confine myself now to the more important changes, the first of which is that the tenant should have rest for seven years. For that period, dating from

the last change in his rent or the last alteration in the area of his holding, we propose to bar enhancements of rent and the issue of notices of ejectment. The present Rent Act does not provide for the issue of notices of enhancement, and the consequence is that notices of ejectment are largely issued for the purpose of securing enhancement as well as for eviction—a fact which must be borne in mind in weighing the annual statistics respecting them. I have already stated that the number of these notices has risen from 25,744 in 1869, the year in which the present Act came into force, to 92,602 in the current year. I shall not trouble Council with the figures for each year, though I have them by me, but state simply that the total number issued in 18 years has been 1,869,964, which would give more than one for every cultivator in the province. This, however, conveys a very inadequate idea of the effect of the notices, for there are districts in which the issues have been comparatively few, and estates where they are little known; and here it is right that I should state that by far the largest proportion of notices has been issued on coparcenary properties, and that tenants on taluqdári estates, speaking generally, have been much less subjected to this form of pressure. Zamindári or coparcenary estates constituted two-fifths of the area of the province, and hence it may be conjectured to what an extent landlords of this class have availed themselves of the power of exaction or eviction with which the law arms them.

"Further, the enquiries reported on by Major Erskine clearly brought out the fact that the number of notices issued was no satisfactory gauge of the degree to which rents were enhanced under their operation. A few notices on the boldest recusants are sufficient to induce the bulk of the cultivators to comply with the landlord's demands. In one large village of Kurmi tenants, the most careful and industrious class of cultivators in Oudh, in which a special enquiry was made in 1881, the Government demand was Rs. 400. The rent-roll had been brought up to Rs. 1,027. A stranger got possession, and by the issue of only 18 notices, and availing himself of dissensions among the cultivators, succeeded in raising the rents of nearly all the tenants from 10 to 20 per cent. The Deputy Commissioner of another district writes in an annual report:—

'The results of the notices appear to have been much the same as last year. Over the greater portion of the Atraula tahsil enhancement of rent is practically made without having recourse to process by notice. The raiyat is actually able to pay something more than he pays at present; the landlord's karinda visits a village and calls on all the raiyats to sign a new kistbundi at enhanced rates; they all refuse at first; then gradually by dint of vigorous harassment and no doubt occasional violence a few are forced to give in, after which most

of the rest follow like sheep, inwardly resolving not to pay a penny more than they used to do. A few independent souls hold out, and are marked down for next notice season. The bulk of the agricultural population in this district are timid and spiritless and extremely ignorant peasants.'

"I could adduce much more testimony did time allow in support of my proposition that the number of tenants affected by the notices of enhancement largely exceeds that of those on whom those notices were served, large though that be.

"On the other side the tenants did not fail to avail themselves, so far as in them lay, of the means of resistance in their power against these attacks of their landlord. The law allows of a tenant giving a notice of relinquishment, and a considerable number of these were issued year by year. Where there were most disturbances at the instance of the landlords there were most relinquishments on the part of the tenants. The districts most distinguished for the action of the landlords in ejectment are those which show the greatest number of tenants' relinquishments. This, however, was a weak defence, and failed when it was most wanted, as in bad years the proportion of relinquishments to ejectments invariably fell, and the landlord was master of the situation. The Commissioner of Rai Bareli writes:—

'The proportion of rents enhanced by notices of ejectment to rents abated by notices of relinquishment is as ten to one.'

"It requires no lengthy argument to prove that the existence and continuance of such a struggle between two parties so unequally matched must prove fatal to the prosperity of the localities where it prevails, and that the first step to be taken for the protection of the weaker and the ultimate good of both is to make the war to cease. This, as I have stated, is the first point aimed at by the Bill in the provisions fixing a statutory tenancy for seven years. That period is an arbitrary one, but it has been fixed in what seemed to be the interests of both parties, and has met with no serious opposition. Like all such arbitrary periods, it may be too long to please one party and too short to please another; it may be impossible to say why it should not be six or eight rather than seven; but it was not arrived at without mature consideration, and I need not detain the Council with the reasons which led the Government to adopt it.

"The next point to be considered is what is to happen at the end of the seven years. Are we to allow the present law to come into force again, and bad landlords with appetites whetted by seven years' abstinence to enhance and eject

ad libitum. This is obviously impossible, and the mode in which protection should be afforded to tenants has been the subject of long and anxious consideration. It might have been proposed that rents should not be enhanced for the term of settlement, and that the landlord's power of ejectment except for non-payment of rent and breach of the conditions of tenure should be carefully swept away. This course, however, was not for a moment contemplated, and, as in Oudh it is beyond the sphere of practical politics, it may at once be dismissed from our consideration.

"Many authorities were in favour of allowing only such enhancements of rent as might be judicially determined by Courts or officers specially empowered to settle rents. This view has in theory much in its favour. The decisions of Courts of Justice are looked upon, if not as the perfection of human reason, yet as the fairest means attainable of doing right in the controversies between man and man. The Courts, however, must decide on evidence furnished to them by the parties, and are shut out from sources of information which, in cases like those involving the fixation of rents over large areas, are essential to the right determination of particular cases and vital as regards the welfare of the agricultural community. Officers specially appointed for the task may indeed after careful study and practical experience acquire such a knowledge of the different soils prevailing in selected localities and of the amount and nature of their produce as may render their decisions less dangerous than those of Courts giving judgment in isolated cases, but they must fail in allowing due weight to the countless diversities which make uniform rates of rent inapplicable to all the fields in a village, circle or other arbitrarily assumed area. No satisfactory standard has yet been devised for determining the fairness of a given rent; and in the North-Western Provinces, where the Settlement-officer's assessment rates, which are easily ascertained, are generally used for this purpose, I can vouch from experience that no more difficult task is thrown upon the Revenue Courts than the trial of enhancement cases. No doubt, valuations of land and produce for the purpose of fixing rent are not uncommon in England and elsewhere, and, where farms are large and capital abundant, furnish a rough and ready means of settling disputes between landlord and tenant. Profits in such countries are large enough to allow a margin for errors in calculation on one side or the other; but in Oudh there is no such margin. The average size of the farms is but five acres, upon which the first burden must be the support of the cultivator and his family; and when the funds necessary for this are deducted, the balance available for the rent is too small to allow of room for miscalculations or error. Any increase to it, however

trifling, can only be made at the expense of the subsistence fund, the diminution of which means the deterioration of the peasant, upon whom in the last resort the support of society depends. The system of determining rent at the present day in this part of India by estimating the money value of a proportion of the gross produce received its deathblow in the lengthened discussions on the Bengal Tenancy Act a year or so ago, and I hope it is unnecessary for me to take up time by arguing against it.

"Another difficulty attendant on the introduction of this system of judicial rents into Oudh I shall just touch on; that is the provision of machinery adequate and competent for the task. Existing establishments have been cut down to the lowest scale, and are working under high pressure; so that it would be obviously impossible for them to undertake the duty of settling rents in hundreds of thousands of cases at the close of the seven year period, and it would be equally impossible for Government to provide at once from other provinces a sufficient number of officers qualified to conduct an operation so delicate and so gigantic even if the successor of my hon'ble friend Sir A. Colvin saw his way to make the necessary financial provision for them—a contingency which the outlook at present scarcely warrants our contemplating.

"All projects for fixing rents judicially being thus abandoned, Government were driven to the alternative of leaving those most interested to adjust rents by mutual agreement, subject to a certain maximum imposed for the protection of the weaker party to the contract. That maximum is an increase of 6¼ per cent. on the existing rent. This gives the landlord an opportunity of revising his rents four times within the currency of a 30 years' settlement, and would enable him under the most favourable circumstances to raise his rents about 27 per cent during that period, while it would at the same time afford him some assurance as to the principle on which the Government demand would be adjusted at the next settlement of land-revenue. Assessments would be based not on conjectural valuations of produce, but on rents actually paid.

"The proposal to fix the limit of enhancement at a proportion of existing rents is not free from objections; like all arbitrary limitations it is open to criticism, but, if we are to wait until we can find a solution of the Oudh tenant-right question against which no objection can be brought, the amelioration of the condition of the tenantry must be deferred to the Greek kalends. The practical question is not what is a theoretically perfect system, but what changes in the present system, effective for the object we have in view, is open to the fewest and weakest objections.

"This limitatation of enhancement proposed is based on a principle universally admitted, that sudden and harsh enhancements are injurious and should be restrained; and existing rents are taken as a starting point, because under the almost unrestricted influence of competition through a series of years and after a general and steady advancement of rents they are understood to be on the whole very closely approximate to the full market-rates, and to bear probably a more uniform relation to the net produce than could be attained by any official revision of them however carefully conducted. It is very probable that the landowner will at the expiry of each statutory period avail himself of his legal right of enhancement *should the circumstances of the market admit it*, but this is an incident of tenure not unknown in the most prosperous examples of British farming.

"The arrangement also possesses the undeniable advantage of certainty, thereby affording to the tenant at the same time security against sudden and excessive ennancement and a stimulus to devote his utmost skill and industry to the improvement of his holding during the seven years for which the law guarantees him undisturbed possession of it.

"The Government, however, are not unaware that change of circumstances may render useless or mischievous a hard-and-fast rule as to the maximum rate of enhancement, and in view of this we have taken power enabling the Local Government to vary within periods of not less than seven years the limits of the enhancement to which tenants with rights of occupancy are liable. I pointed in my speech on the introduction of the Bill to some causes which might render a fixed maximum oppressive or inadequate, and recent experience in Ireland, if such were necessary, warns us that a few bad seasons may have such an effect on rents fixed on what seemed at the time to be equitable principles. The power is no doubt an important one to be entrusted to the executive Government, but it would be put in force only on exceptional occasions, and its exercise would be carefully watched. It is not desirable that on every occasion where circumstances may call for a variation of the limit of enhancement the intervention of the legislature should be resorted to, and the whole question of the relations between landlord and tenant be thereby again opened up. It must also be borne in mind that Government has a substantial interest in holding the balance fairly between them on this point. As the interdependence of land-revenue and rents is becoming closer every year, any large reduction of rents must affect the Government revenue. I now pass on to the subject of ejectment.

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"Enhancement and ejectment hang together. As I have pointed out on a previous occasion, provisions for protecting the tenant from enhancement are of little use if the power of ejectment at his will and pleasure is left to the landlord. A tenant in an agricultural community such as we have to deal with will agree to any demand which does not involve starvation sooner than part with what affords the means of subsistence for himself and his family; and the unrestricted power of ejectment is really a power to rackrent. That this power has not everywhere produced its natural consequences hitherto is due to the moderation of the majority of the landlords, and to the fact of the pressure of the population on the land not having reached its extreme limit in all parts of the province. But this state of things is passing away, and the moderation of landlords will be subjected to a strain too great to be resisted. Moreover, cases are but too numerous where the power, chiefly I am bound to say among the smaller landlords, has been unsparingly exercised, and also where the lessees of absentee proprietors have not failed to push to the utmost the advantage which the law gives them. Limitations on the power of ejectment are therefore a necessary consequence of those on enhancement.

"The Bill proposes in the first instance to render more effective the provisions of the existing law regarding the payment of compensation for tenants' improvements. On this point I need not now dwell. The new section has been drawn on the lines of that passed for Bengal last year, and is likely to excite little controversy. The principles on which it is based were thoroughly discussed in this Council on more than one occasion, and have encountered no opposition.

"The mere payment, however of compensation for improvements is not a sufficient deterrent, as in the cases where it will operate the landlord is sure of receiving again a return for the money expended by him. Something further is required to prevent landlords from using the power of ejectment harshly or capriciously to the detriment of their tenants generally, and this the Bill furnishes in the shape of compensation for disturbance. A landlord who ejects a tenant willing to pay the statutory enhanced rent at the end of the seven years' period of occupancy must pay the tenant so ejected one year's rent. Compensation for disturbance is not alogether a new idea in India. In No. 1 of the printed papers hon'ble members will find an account by Mr. J. B. Lyall of a system based on this principle which was introduced and worked by him for a time with the assent of the zamindárs in the Kangra district. Three years ago this Council accepted the principle and embodied it in the Central Provinces Tenancy Act. I have referred to my

friend the Officiating Chief Commissioner as to the working of the provision. He tells me that the time that has elapsed since the Act came into force has been too short to allow of the law on this point being made much use of, or to admit of any valuable opinion being formed as to its operation. The principle was also contained in the Bengal Tenancy Bill as introduced, and was dropped out only at the last moment, having been found to be not required for occupancy-tenants. The non-occupancy-tenants were believed to be only a minority of the cultivators of Bengal, and it was considered that they would derive sufficient protection from the system of judicial leases established by the Act. In Oudh, circumstances, I need scarcely point out, are certainly different. The whole of the Oudh cultivators are practically tenants-at-will, and the Bill makes no distinction between classes among them, and establishes no favoured grade—a principle which has been steadily kept in view in maturing the present proposals. Compensation for disturbance has thus been for some time under discussion in this country, and Government has failed to discover any more effective means of checking evictions made with the view of securing harsh and unreasonable enhancements.

"A low scale of compensation for disturbance will not operate strongly, it is true, in checking enhancements where there is a keen competition for land, and the landlord can look forward to receiving at once from the incoming tenant a bonus sufficient to recoup the compensation paid to the tenant who vacates; but, unless under very favourable conditions, it must act in some degree as a deterrent to a landlord who wishes to proceed to enhancement by way of eviction. The necessity of paying down cash the recovery of which may be open to some doubt will in such cases make a landlord pause, and the knowledge that if ejected he will not be turned out on the world as a pauper will promote the self-respect of the tenant and nerve him to apply his skill and industry to making the most of his holding.

"This is, however, one of the points in the Bill to which objection is made by the Taluqdárs Association.

"In the discussions on this Bill the Government have shown themselves desirous as far as possible to meet the objections of the taluqdárs, and if my hon'ble friend can bring before the Select Committee any modification of our plan of compensation for disturbance, or any substitute for it which is likely to prove equally effective for checking capricious evictions, I can assure him of the fullest and most favourable consideration for it.

"I may, however, state here some considerations which have occurred to me respecting the objections to our proposal urged by the taluqdárs. Their

objection, as I understand, is not so much to the imposition of a penalty on the exercise of their power of ejectment as to the indignity of being obliged to pay money to a tenant from whose presence they are anxious to free their estate. There is doubtless force in this objection in the case of a good landlord who desires for the benefit of his property to get rid of a bad tenant. But all landlords are not good and all tenants are not bad. And we are legislating to prevent bad landlords from doing what good landlords have not hitherto felt inclined or compelled to do. A bad tenant would in most cases be slack in the payment of his rent, and we have introduced a new provision into the Bill which will enable a landlord at any time to get rid of a tenant who cannot or will not pay up arrears of rent decreed against him. This is a considerable extension of the powers of realising arrears of rent by ejectment possessed by landlords under the existing law, and will, I hope, be taken as outweighing in some degree the obligation of paying compensation for disturbance to tenants ejected on other grounds.

"It is also urged that the right of compensation for disturbance at the close of the seven years' tenancy implies a right of occupancy in the land against the will of the landlord, and that the recognition of any such right in the tenants derogates from the rights guaranteed to the taluqdárs. This applies only to taluqdári estates, and has no bearing on two-fifths of the land of Oudh, which is not held by taluqdári landlords; and I would appeal to my hon'ble friend to consider before he pushes home the argument, whatever be its worth, whether, having acknowledged most candidly the necessity for affording tenants stability of tenure for a period of seven years and protection from excessive enhancements at the end of that period, the taluqdárs of Oudh are prepared to nullify the provisions on this last head by insisting on opposing for the benefit of bad landlords measures by which alone those provisions can be made a reality.

"The Bill as it stands enables any landlord to get rid of the obligation of paying compensation for disturbance by granting leases for a longer period than seven years, which, coupled with the power of requiring the prompt ejectment of a tenant who fails to pay arrears of rent decreed against him, limits the range and mitigates the stringency of the provisions objected to.

"My Lord, I feel I have trespassed on the patience of the Council to an unconscionable extent, and I shall add only one word as to the objection taken to section 129 of the Bill, which reserves power to the Local Government to revise and settle rents under certain conditions. I explained on a former occasion that this section was drafted in order to define the liability of the

taluqdárs under the sanads by virtue of which they hold their estates. I showed that even in case of small zamindárs the grant of such powers was not unprecedented, that it would really be a relief to good landlords to know exactly what they might and might not do without incurring the risk of penalty, and that it was supported by a warm friend of the taluqdárs. Their Association, however, objects strongly to the grant of this power to the Local Government; and as the enforcement of the conditions of the sanad is of the highest political importance and one on which no doubt as to the views of the Government of India and indeed of Her Majesty's Government at home should be allowed to remain, I shall leave the objection to be dealt with by the members of the Executive Council who follow me."

The HON'BLE RANA SHANKAR BAKSH then addressed the Council in the vernacular, a translation of his speech being read by the Secretary as follows :—

" My Lord,—As a Member of this Hon'ble Council, I feel it my duty to express my humble views on the broad and difficult questions involved in the Oudh Rent Bill, which is now before Your Excellency's Council. But I shall confine myself to a few remarks which will not take up much of the valuable time of the hon'ble members.

" From the results of formal and elaborate enquiries which have from time to time been made into a tenant-right in Oudh, it has been universally admitted that the landlords in Oudh have never practised extortion towards their tenants. In support of this I respectfully refer Your Lordship to the Minute of His Honour the Lieutenant-Governor, North-Western Provinces and Oudh, dated 28th December, 1882; to letter No. 135, dated 1st June 1883, from Major Erskine, the Special Commissioner; and to letter No. 3939, dated 21st December 1882, from the Secretary to the Government, North-Western Provinces and Oudh. In the face of such high authorities exonerating the taluqdárs from the charge of rackrenting and oppression, I humbly submit that I am quite unable to understand how such a charge can for a moment be supposed to be true or well-founded, and how the notorious Sahlamao case can be cited in support thereof.

" The sanads granted to the taluqdárs, when read with the letters of the 10th and 19th October, 1859, leave no doubt as to the fact of the protection therein afforded being confined, with certain conditions, to those under-proprietors who occupied an intermediate position between the superior proprietors or taluqdárs and tenants-at-will, and who were actually found to possess an occupancy-right in 1855. But in obedience to the will of Government, and with the sole view of

benefiting these intermediate holders, the taluqdárs have loyally submitted to the extension of the period, during which their claims may be heard, to twelve years. This is sufficiently proved by the following legislative enactments and official circulars to which I humbly draw the special attention of this Hon'ble Council:—

"By Act XVI of 1865 the period in question was extended from the 13th February, 1844, to the 13th February, 1856.

"By Act XXVI of 1866 under-proprietary rights in *sír*, &c., were conceded to sub-lessees and under-proprietors.

"By Act XIII of 1866 the right of redemption of mortgage was allowed, contrary to the express provisions of the sanad.

"By Circular IV of 1867 compensation was made to ex-proprietors in the shape of an under-proprietary title.

"By section 5, Act XIX of 1868, a right of occupancy was conferred on ex-proprietors in their *khudkásht* land.

"Having mentioned briefly some of the most valuable concessions made by the taluqdárs in favour of their tenants, I proceed to examine the broader question of an alleged 'tenant-right' in Oudh. On this important question I think I cannot do better than draw the attention of this Hon'ble Council to the elaborate and complete enquiries made in 1865, which resulted in the famous despatch of Her Majesty's Secretary of State dated 10th February, 1865, wherein it was finally settled and authoritatively declared that no tenant-right had ever existed in Oudh; that is, tenants-at-will possessed no right whatever in the land they cultivated. But the taluqdárs of Oudh, in deference to the wishes of Government and with the sole view of gaining their goodwill and promoting the welfare of their tenants, have, of their own accord, by a Resolution of the Committee of the British Indian Association held on the 22nd April, 1886, agreed to make two fresh valuable concessions in favour of the latter, and cheerfully accepted the rules of seven years' lease, and of the limitation of enhancements, subject to the following very important exceptions:—

"*(a)* *nautore* (land given on clearance lease),
"*(b)* *banjár;*
"*(c)* jungle;
"*(d)* new alluvial land;
"*(e)* *parti;*
"*(f)* land rendered culturable by the landlord at his own expense.

"Thus, my Lord, the taluqdárs of Oudh have on every occasion proved their loyalty and devotion to the British Government, have always earnestly endeavoured to gain its goodwill, and have always shown moderation and liberality to their tenants and those who hold under them. Under these circumstances, I respectively submit that the charge of rack-renting and oppression brought against them is far from being just and reasonable. But, as experience has shown that section 43, Act XIX of 1868, has not worked as well as could be desired, and that some amendment should be made therein in the interests of all concerned, I do not feel myself justified in saying that I hold a different opinion.

"Now, with Your Lordship's permission, I propose to examine some other provisions of the Oudh Rent Bill which, in my humble opinion, are open to serious objections.

"Among these I would, with due deference, draw Your Lordship's attention to the provisions of section 38 (A), regarding compensation for disturbance, and of section 129, authorizing the Local Government to interfere in cases of great mismanagement. These sections, I humbly submit, should be entirely expunged from the Bill, because 'compensation' presupposes the existence of a right in lieu whereof something is given; and as no tenant-right is proved to have ever existed in Oudh, nor can any be created, it does not appear for what the proposed compensation is to be given. If this compensation is for ejectment, it involves the loss of the proprietary rights of the landlords, and will inevitably have the effect of depriving them thereof. It will be a very great hardship to the landlord if, after being debarred from ejecting his tenant for seven years, and enhancing his rent beyond one anna in the rupee on the expiration of that period, he is compelled to pay one year's rent to the tenant so ejected. Such a measure would almost be intolerable to the landlord. As an illustration of this I would humbly ask Your Lordship to look into the case of a tenant who has to pay an annual rent of one hundred rupees, and who, on being ejected after the expiration of the statutory period of seven years, is paid that amount, and the land is let to another tenant on a rent of Rs. 100 *plus* Rs. 6-4. During the next seven years the landlord will realize from the new tenant Rs. 43-12 only, which is less than one-half of the amount he has paid to the old one as compensation for disturbance; that is to say, out of a total rent of Rs. 100 the landlord will lose Rs. 56-4, and will have no prospect of realizing that amount from any one by any means, nor will he be able to recoup himself during the next fourteen years for the loss thus sustained. The compensation for disturbance rule, which is a very hard-and-fast rule indeed, will, in the long run, deprive the landlord of his power of

ejectment altogether, and will give the tenant a right to hold the land for a practically unlimited period. Upon those who cannot afford to pay any compensation at all, it will have the effect of permanently transferring their properties to their tenants. It is the duty of this Hon'ble Council to have due regard for the rights and interests of all classes for whom it proposes to legislate.

"Another effect of this compensation for disturbance rule will be that it will be an irresistible temptation to tenants to shift their holdings as frequently as they can, and will set them wandering about in quest of better land and a more lenient landlord from whom they could squeeze a larger amount as compensation for disturbance. One of the main objects of this Bill, as I understand it, is to give fixity of tenure to the cultivator, and to induce him to devote more time and labour to the cultivation of his holding. This object, I humbly submit, will be utterly defeated by the rule in question, which, diverting the tenant's attention from the cultivation of his holding, will fix it on compensation. This, as a matter of fact, will lead to the deterioration of the soil, and will leave no chance of its improvement. What justification is there, I would respectfully ask, for depriving the party justly entitled of a portion of his right and giving it to another party which does not possess the shadow of a right? Will it be just and reasonable to deprive the landlord of the only means of getting rid of a bad tenant by making this objectionable rule applicable to all classes of tenants? The ejectment of recalcitrant tenants should, like that of defaulters, be made a rule rather than an exception.

"Now, with due respect and deference, I beg to draw the attention of this Hon'ble Council to the provision of section 129. I will not dwell upon the reasons and motives which have prompted the insertion of this section in the present Bill. I will leave it to the hon'ble members to consider and decide whether it is necessary to retain this section after adequate provisions have been made for fixing the term of the lease and limiting the enhancement of rent. The term of the lease having been fixed and the rate of enhancement limited, I humbly submit that this section seems to me to be entirely unnecessary and undesirable, and should be expunged from the Bill.

"In conclusion, I humbly pray that sufficient time may be allowed to the taluqdárs for submitting their objections to certain provisions of this Bill, and suggesting some useful provisions for insertion therein, and explaining the exceptions subject to which they have accepted the rules of seven years' lease and of the enhancement of rent. I beg leave to support the Motion that the Oudh Rent Bill be committed to the Select Committee for consideration and report."

The HON'BLE SIR STEUART BAYLEY said:—"I think, my Lord, that the Council are to be congratulated in the circumstances under which they are now proceeding with this Bill, as the announcement which we have just heard from the hon'ble member who represents the Taluqdárs' Association, that they accept the two main principles of the Bill, renders unnecessary a great deal of irritating controversy as to the legislation of 1868 and the circumstances of the inquiries which led up to it. There is a great deal to be said on both sides of the question, but it cannot be said without raising a certain amount of unpleasantness, and for that reason I am very glad that it has not come to be discussed. With regard to the legislation of 1868 itself, I have only to make one observation, and that is that Sir John Strachey, who introduced the Bill himself, looked forward to the time when under the stress of unlimited competition it would be necessary to take fresh legislative action in order to strengthen the tenants' position; and he was careful to point out that the hands of the Government of India were as much unfettered in intervening in questions between the landlord and tenant in Oudh as in any province in India, except in regard to the one point as to the conditions under which the rights of occupancy should be exercised. He mentioned this, and he significantly added that it would be desirable that there should be no misunderstanding on that point. Nor need I now, after the exhaustive explanation which the hon'ble mover of the Bill has given us, enter at any length into the present condition of affairs, which has rendered legislation necessary. The Council are well aware that the province of Oudh is a purely agricultural country, that it is very thickly populated, and that, of the tenant-cultivators, over 99 per cent. are cottier tenants-at-will, liable to be ejected every year on a notice of one month. The inquiries instituted, and which lasted for several years, were very exhaustive, and the result, as the papers before you show, was that there was an unanimous opinion on the part of the district officers that, in view of the rapid rise in rents, of the rapid increase in notices of ejectment and of the general status of the cultivators which I have just pointed out, it would be absolutely necessary to strengthen their position with a view to giving stability to cultivation and encouraging improvements. Those were the conditions which led to the introduction of the Bill.

"Turning now to the speech of the hon'ble member who represents the taluqdárs,—a speech which follows the main lines of the memorial of the 23rd April, submitted by them,—I have first to remark that I think the Government ought to acknowledge heartily the loyalty and moderation with which the body of taluqdárs have advanced half-way to meet the wishes of the Government; and I think

that, on our part, we ought to give very careful consideration in consequence to whatever objections they may urge to the special provisions of the Bill, and that as far as possible, with due reference to the security which it is the main object of the Bill to obtain for the cultivators, we ought to do our utmost to meet their wishes. The two points to which both in the memorial and in the hon'ble gentleman's speech the greatest attention is given are sections 38 and 129. Section 38 provides that, when a landlord elects to eject a tenant at the expiry of his lease without giving him the option of staying on at an enhanced rent, he shall give that tenant compensation for disturbance equal to one year's rent. Section 129 provides that, when the agricultural condition of an estate is greatly deteriorated owing to gross mismanagement, the Government shall have the power to send in an officer to settle the rents, and the rents so settled shall be stable for a period of ten years.

"I will, with the permission of the Council, deal with the latter of those two sections first. The history and object of that section, as has been explained by my hon'ble friend Mr. Quinton, was to give effect in a modified form and in a legal method to a well known provision of the taluqdárs' sanad. That provision is to the effect that they should be retained in possession of their estates so long as they maintained the agricultural prosperity of those estates and secured those holding under them in the possession of their rights. This clause in the sanad has been the subject of a great deal of discussion. Sir Charles Wingfield, who was the strongest upholder of taluqdári rights, refers to it distinctly as a condition which warrants the Government in interfering in order to prevent oppression; and Sir George Couper in one of his letters speaks of it as the Magna Charta of the Oudh rights. Well, no doubt that condition in the sanad does give Government the power of interfering to prevent oppression, but the terms are somewhat vague and indefinite, and the penalty—no less than confiscation or sequestration—is so enormous that it is not to be wondered at that the Government have been very reluctant to take executive action under that condition. As a matter of fact, it has only once been acted upon. It therefore appeared possible that, instead of leaving this tremendous "bludgeon clause" hanging over the heads of the taluqdárs, a modified penalty to be exercised under the definite provisions of the law might be found to meet all the requirements of the condition, and might not be unacceptable from that point of view as a definite and milder penalty to the taluqdárs. For my own part I cannot confess to feeling any surprise that, on consideration, the taluqdárs have preferred to go on living under the same indefinite terror, to which they have become accustomed, rather than to accept a more definite, although very much milder, penalty about which

they could only predicate that in occasional cases it might be reverted to with less reluctance than the severer one. Speaking for myself, I should say that this Bill gives generally such protection to the raiyats as to render it unnecessary to have recourse to special and exceptional action in regard to individual ill-doers. Consequently, if the proposal is accepted by the Local Government, I shall without regret see the section expunged by the Select Committee.

"The question of compensation for disturbance is a much more difficult one. It is discussed very fully and carefully in Sir Alfred Lyall's letter of the 21st December, 1883; it runs in and out throughout the whole correspondence, is perpetually cropping up, and argued first from one point of view and then from another; and when you think it is put aside for the moment, you find that every question comes back to this as the main prop on which almost all the other provisions of the Bill hinge. The point is this—In order to give stability to the cultivator and encourage him to make improvements, Sir Alfred Lyall has laid very great stress upon the necessity of giving the sitting tenant at the end of his seven years' lease option of holding on at the enhanced rate. I should explain that under the accepted provisions of the Bill he gets under a seven years' lease and a limit on the enhancement. Sir Alfred Lyall then says that the sitting tenant ought to have the first option of a new lease at the enhanced rate. But, if side by side with that provision you leave it in the power of the landlord to eject a tenant without compensation, what becomes of the safeguard that Sir Alfred Lyall thinks absolutely necessary? The condition that the sitting tenant shall have the first option of the renewed lease at an enhanced rate is nullified; as a matter of fact you come up to almost unrestricted competition. On the other hand, the position taken up by the taluqdárs is very strong. I cannot quite follow my hon'ble friend in the first of his arguments that, because a tenant has no occupancy-right, therefore the offer of compensation is a distinct deduction and derogation from the proprietary right of the landlord. It is true that the decision of the Government was that the tenant has not, and never had, an occupancy-right which could be enforced; but it is well known—and I do not think that the fact will be disputed anywhere—that the tenant in Oudh, as elsewhere, has by custom an hereditary occupation. That was the opinion of Lord Lawrence's Government in their letter to the Chief Commissioner of the 16th February, 1866, in which it is said:—

'3. The evidence adduced tends to show that under the Native Government of Oudh there was vested in the raiyat no right of occupancy which could be successfully maintained against the will of the landlord.

4. It is at the same time held by no means certain that the landlord had a legal right to oust a raiyat who continued to pay the customary rent, and there existed a prevailing usage by which the occupant-cultivators did, in point of fact, generally maintain the hereditary possession of their lands at the customary rents.

'5. It is unnecessary here to enquire whether this usage was the remnant of a former right of occupancy surviving thus imperfectly a long reign of anarchy, or whether it sprung spontaneously out of the mutual relations and necessities of landlord and raiyat. It is admitted very generally to exist, and in some quarters with such strength and distinctness as closely to resemble an actual right.'

"Well, it is admitted the raiyat's status is a question of custom and not of right, but, admitting this, I cannot see that compensation involves any real weakening of what is generally understood as the landlord's proprietary rights. Apart however, from this objection, I think that from the landlord's point of view there is objection to be taken very strongly on two other sides of the question. The landlord might very properly say 'Why, if I want to get rid of a recalcitrant tenant, should I be fined for it?' Or, even if he does not look at the matter from that point of view, he may very strongly say 'Why, when I find it essential to the peace of the neighbourhood, owing to the carelessness of a man or to his disposition to cause trouble, or even owing to caste prejudices—if I find it necessary for my own peace and perhaps to retain my other tenants—if I find it necessary to oust him—why should I have to make him a present of a year's rent?' This really becomes a premium on turbulence and misconduct, and from that point of view I must confess there is a great deal to be said in favour of the objection; and Sir Alfred Lyall, in the letter from which I have quoted, had not failed to notice the point. He discussed it and tried to find a remedy; the remedy which he proposed, or rather discussed, was that, when it became a question of getting rid of a recalcitrant tenant, a landlord should be able to get rid of him by satisfying the Revenue Courts that he had sufficient reason for so doing. Sir Alfred Lyall in discussing the matter came to the conclusion that in the first place this would involve a great deal of unpleasant litigation—litigation which would probably cost the landlord quite as much as the year's rent which he was asked to pay as compensation for disturbance, and which, if the cost were thrown on the raiyat, would ruin him; and further he objected that the particular grounds for getting rid of the man were such that the question would be one in which no Court could come to a satisfactory decision. He consequently rejected that suggestion and fell back upon the proposal now made in the Bill. The point is one on which there is a great deal to be said on both sides, and on which I confess I should like to reserve my final opinion. I think that, while we ought to attach very great importance to the

object Sir Alfred Lyall has in view, the particular method here brought forward in the Bill is one to which an equal importance does not attach; that is to say, if this security can be attained by any other method, or if after full consideration the local officers and the Local Government think that the Bill gives sufficient security without any further safeguards, then I for my part should be very willing to be guided by their advice.

"The other points discussed in the memorial are mainly questions which must be viewed in the light that may be thrown upon them by local custom; they are consequently questions upon which I am not prepared at present to give any opinion at all, and they will be more properly discussed in Select Committee. I am glad to learn from what my hon'ble friend has mentioned that before the question comes before the Select Committee it is the intention of the Lieutenant-Governor of the North-Western Provinces and Oudh to meet the taluqdárs at Lucknow, and to go into the question again fully with them. Under these circumstances I think the Select Committee will have the best possible advice; their task will be very much simplified, and they will be able to arrive at a much more satisfactory decision than they otherwise could have done.

"Finally, I have only to say that, believing as I do that this Bill is calculated to do much for the agricultural prosperity of the province, I think that Sir Alfred Lyall is to be congratulated on having initiated it. I think also that he is to be congratulated on the confidence in his justice and farsightedness which he has inspired in the taluqdárs, and which has influenced them in accepting the two main principles of the Bill, although no doubt they derogate somewhat from their present powers."

His Excellency THE PRESIDENT said:—

"I shall only trouble the Council with a very few observations, and I cannot preface them in a manner more consonant to my own feelings and to the sentiments which I know to prevail amongst my colleagues than by congratulating them and myself upon the acquisition of our new member, who has already shown by the ability with which he has expressed his views what a useful and worthy accession he is likely to prove to the Legislative Council of the Government of India.

"At our last meeting in Calcutta I explained that the reason why we did not then proceed with the the Bill was the unavoidable absence of our colleague, the Hon'ble Rájá Amir Hosan, who was prevented from taking his place among

us by severe illness. I added, however, that the Local Government, in order to save time, intended to publish a draft of the Bill, and to collect the opinions of competent authorities upon it. Rájá Amir Hosan is, to our great regret, still disabled from attending here, but a very well-qualified representative of the taluqdárs, the Vice-President of their Association, has been appointed to assist us by his advice. The Bill has now been examined by the taluqdárs, and we are in possession of their views; and I am glad to learn that in the main principles of the Bill they have expressed their acquiescence. I myself am fully convinced of the expediency of legislation on the lines of this Bill, and, while congratulating the taluqdárs on the moderation they have shown, I am glad to understand from the previous speakers that there is a disposition to meet, as far as possible, the wishes of the Association on minor points.

"There is one special matter, however, upon which I should like to say a word in reply to what has fallen from my hon'ble colleague Rana Shankar Baksh Singh, and that is the question of compensation for disturbance. I understand that the taluqdárs are inclined to consider that, were a claim of this sort to be conceded to the tenants, it would be tantamount to an acknowledgment of a right of permanent occupancy in their favour. Now, this is a matter which has for many years past occupied my attention, and I must confess that in my opinion no such consequences can be held to flow from it. When a yearly tenant s unexpectedly evicted from his holding, the injury he sustains is not limited to the loss of his improvements, but it entails a further loss occasioned by the disturbance introduced into his plan of life and his industrial undertakings. As a landlord I have myself always recognized the equitable claim of the tenant-at-will to compensation on this account, especially under a system of agriculture such as that which prevails in Oudh and in my own country, but I never held nor admitted that it implied either a proprietary or an occupancy right. When, moreover, we remember that this claim only amounts to one year's rent (in Ireland it was assessed at between four and seven years), and that it can be neutralized by the grant of an eight years' lease, I do not think that its recognition by the legislature can be complained of by any one. I admit, however, that the interests of the landlord in regard to the tenant's disturbance claim should be safeguarded by allowing him to plead certain considerations as an offset or justification. However, I will not dilate further on this particular point, because it falls more properly within the competence of the Committee to which this Bill has been referred. I will only conclude by saying that there is now no reason for further delay, and the Bill will proceed in due course through the regular stages. Between this and the time when the Select Committee will meet, the criticisms of the public on the Bill

will be invited, and it will be examined anew by the Association of the taluqdárs and discussed with His Honour the Lieutenant-Governor and Chief Commissioner, who will visit Lucknow for the purpose."

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also moved that the Bill and Statement of Objects and Reasons be published in the *North-Western Provinces and Oudh Government Gazette* in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES RENT ACT, 1881, AMENDMENT BILL.

The Hon'ble MR. QUINTON also moved that the Report of the Select Committee on the Bill to amend the North-Western Provinces Rent Act, 1881, be taken into consideration. He said:—

"When I obtained leave in Calcutta to introduce this Bill and that to which the following Motion refers in February last and refer them to a Select Committee, I stated at length the reasons which in the opinion of the North-Western Provinces Government rendered legislation necessary. I have not had the advantage of attending the meetings of the Select Committee, but the criticisms received have been duly considered and the Bills have emerged from the crucible with no alterations of importance.

"Under these circumstances I feel justified in asking the Council to pass them today."

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

NORTH-WESTERN PROVINCES LAND-REVENUE BILL.

The Hon'ble MR. QUINTON also moved that the Report of the Select Committee on the Bill to amend the North-Western Provinces Land-revenue Act, 1873, be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also moved that the Bill be passed.

The Motion was put and agreed to.

INDIAN MUSEUM BILL.

The Hon'ble SIR. S. BAYLEY introduced the Bill to alter the constitution of the body corporate known as the Trustees of the Indian Museum, and to confer certain additional powers on that body, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Ilbert, the Hon'ble Sir A. Colvin and the Mover.

The Motion was put and agreed to.

The Hon'ble SIR S. BAYLEY also moved that the Bill and Statement of Objects and Reasons be published in the *Calcutta Gazette* in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

DEBTORS BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to amend the law relating to imprisonment for debt. He said:—

"I am reminded by the audience who are facing me that the Council is practically sitting to-day as a local legislature for the territories under the administration of the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh,—territories to which a separate legislature has not been given under the provisions of the Indian Councils Act,—and accordingly this is, I think, a suitable opportunity for the introduction of a measure the immediate application of which will be confined to those territories.

"In moving recently for leave to introduce the Indian Bankruptcy Bill I referred to the important subject of imprisonment for debt, and, whilst frankly stating my personal opinion that the present law is a bad law, I went on to say that in the present state of Indian public opinion I was not prepared to propose any amendment of it which should apply to the whole of India. But I took care to reserve my opinion on the question whether the Government would not be justified in proposing legislation confined in its scope to a particular province where the balance of authoritative opinion was in favour of such legislation. It is a measure of such limited application that I am now asking leave to introduce.

"The present state of the law is this. Under the Civil Procedure Code a decree or order for the payment of money may be enforced by the imprisonment of the judgment-debtor. The Court has a discretionary power to refuse execution at the same time against both person and property, but has no discretionary

power to refuse execution either against person or against property at the option of the creditor. When an application for execution of a decree is presented, it must, if it is not barred by efflux of time and is otherwise in order, be admitted, and then the Court must order execution of the decree *according to the nature of the application.* The Court cannot refuse to issue its warrant for the execution of the decree unless it sees cause to the contrary, and 'cause to the contrary,' as interpreted by the Courts, means some cause which deprives the decree-holder of the right to execute, or to execute against the party against whom execution is sought, or to execute in the mode prayed for.

"But to this general law there is one remarkable local exception. In the four districts of the Dekkhan to which the Dekkhân Agriculturists' Relief Act applies, arrest and imprisonment for debt have been altogether abolished in the case of the class of persons described in the Act as agriculturists: 'No agriculturist,' says the Act, 'shall be arrested or imprisoned in execution of a decree for money'. The Act has now been in operation for more than six years, and the periodical reports of its working show that this simple and trenchant provision has worked well, and has been attended with beneficial results. Now the Dekkhan Relief Act is, substantially, an amendment of the Civil Procedure Code, confined in its scope to a specified, but extensive and important, set of transactions; and I have always considered that such of its provisions as are found by experience to work well ought eventually to be generalized and embodied in the Code. The experience already gained of this particular provision is, I think, at least sufficient to justify us in trying it on a more extensive scale.

"It will have been seen that, under the general provisions of the Civil Procedure Code, the discretion as to whether a debtor shall be arrested and imprisoned or not rests not with the Court but with the creditor. It may be clear that the debtor has property available for attachment, and that a warrant of arrest has been applied for from vindictive or other improper motives, and yet, if the creditor asks for a warrant of arrest, a warrant must issue. The debtor may be a woman, she may even belong to the class of women who by the law of this country are exempted from public appearance in Court, and yet, if the creditor says that he wishes to send her to prison, to prison she must go.

"Now, in the year 1881 a case occurred which illustrated the working of this provision of the law and attracted a good deal of public attention. The case was one in which a *paradánashin* lady in Calcutta was arrested and imprisoned in execution of a decree for money obtained against her. Some correspondence with respect to the case took place between the Government of

India and the Government of Bengal, and eventually, as a result of the correspondence, a circular was in November, 1881, addressed by the Goverment of India to all Local Governments and Administrations, stating that the Government of India had under consideration the question of amending the provisions of the Code of Civil Procedure bearing upon the question of the arrest of *paradánashin* women in execution of the decrees of Civil Courts, but that before coming to any final conclusion on the subject the Governor General in Council thought it desirable to deal with the larger question of abolishing imprisonment for debt, and for this purpose to enquire whether sufficient reasons exist for the continued maintenance in India of the present system. Local Governments and Administrations were accordingly requested to favour the Government of India with a full expression of their opinion on the matter.

"The replies to the circular disclosed much difference of opinion with respect to the advisability of maintaining for India the present system of imprisonment for debt, and the usual arguments, with which most of us are familiar, were duly marshalled on either side.

"The arguments on which the upholders of the present system relied fall into two classes: first, arguments which, if valid at all, are valid for England as well as for India; and, secondly, arguments based on the special circumstances and conditions of India.

"To arguments of the first class belongs the assertion that 'to remove from the Statute-book the penalty of arrest and imprisonment in execution of a decree for money would be to paralyze the commerce and trade of the country.' These general predictions are dangerous. Precisely the same objection was made in England, first to the abolition of arrest on mesne process, and afterwards to the abolition of arrest on final process. It is the kind of objection which, as logicians would say, *solvitur ambulando*. The power of arrest was removed, and neither commerce nor trade shewed any symptoms of paralysis.

"Those who uphold imprisonment for debt, not as being generally expedient, but as being specially required for India, do so mainly on two grounds: first, the complexity and obscurity of Indian titles to property; and secondly, the exceptional prevalence of fraud in India, and the exceptional difficulties of detecting it.

"As to the first ground, I will only say that two wrongs do not make a right. If it is wrong, as I hold it is, to allow a debtor to pledge his person as security for his debts, it is not the less wrong because, owing to the defects of Indian property law, he finds difficulty in giving a satisfactory security over his property.

"In the argument based on the prevalence of, and difficulty of detecting, fraud there is undoubtedly much force, though, after having in the course of my professional career studied most of the reports and evidence bearing on the law of debtor and creditor in England and conversed with a large number of persons who have a practical experience of its working, I am inclined to doubt whether the moral complexion of the Indian debtor is really so much darker than that of his English brother, and whether the obstacles which can be placed in the way of a creditor realizing his debts are not as great in England as in India. But, however this may be, to make an honest, though needy, debtor liable to imprisonment, simply because fraudulent debtors are numerous and difficult to detect, appears to me something like making homicide by misadventure punishable by death, simply because the crime of murder is rife and hard to prove.

"There are, in my opinion, two principles which ought to be observed in every law of debtor and creditor. The Courts ought not to give effect to any pledge by a debtor either of his person or of the bare necessaries of life. The debtor ought not to be allowed, by his own action, supplemented by the action of the Courts, either to deprive himself of his personal liberty, or to reduce himself to starvation. If he cannot obtain credit except on one or other of these securities, it is better that he should not obtain credit at all. These principles appear to me to be as applicable to India as to England—to an uncivilized as to a civilized country. The Code of Civil Procedure recognises one of these principles by exempting from seizure for debt the debtor's bare means of subsistence. But this recognition is nullified by the refusal to adopt the principle of exempting the debtor's person from seizure. Of what use is it to reserve by law to the debtor the bare necessaries of life, when he can be compelled to give them up by the threat of imprisonment? By those who advocate the retention of the present system much reliance is placed on the very small proportion of actual imprisonments to warrants of arrest; and the inference drawn from this proportion is that the law, though harsh in theory, produces no hardships in practice. But my belief is that, in the great majority of cases, exemption from arrest is purchased either by renewal of bonds on extortionate terms, or by surrender of property which the law has exempted from seizure, or by surrender of property which does not belong to the debtor at all but to his relations or friends. In other words, the law enables a creditor to do indirectly what it forbids him to do directly.

"It is said that the honest debtor has an easy way out of prison through the door of insolvency. But in the first place, the honest debtor ought not to be sent to prison at all; and in the next place, the door which is provided for his release is, for some reason or other, very rarely used. There is, or was until

recently, a strong concurrence of opinion to the effect that the Insolvency chapter of the Code of Civil Procedure is practically a dead letter. As to the causes of its failure,—whether it is to be accounted for by the preliminary proceedings being unnecessarily cumbrous or expensive, or by the difficulty of satisfying the Court that the debtor has not been guilty of any kind of misconduct, or by ignorance of the law and of the modes of relief available to debtors,—opinions differ; but about the fact of failure there appears to be no difference. The legislation of 1879 has done something towards the improvement of the Insolvency chapter of the Code. But I believe that the experience of those who have been concerned in the working of that chapter will bear me out in saying that notwithstanding those improvements the number of orders passed under it falls very far short of what might be expected under a thoroughly satisfactory and workable law. And whilst this is so it would be unfair to point to the provisions of the chapter as a justification of a law which, but for those provisions, would be admittedly unjust and defective.

"My own strong opinion, on the evidence before me, is that imprisonment for debt, as such, ought to be abolished in India as it has been abolished in England and other civilized countries, but that in India as in England imprisonment should be retained as a punishment in those cases where indebtedness involves an element of fraud.

"If I thought that the objections to the present law were merely theoretical, if the conclusions at which I have arrived were based merely on *à priori* reasoning and were not supported by practical experience, I should hesitate to bring forward proposals about the expediency of which doubts are entertained by a large number of the Indian judicial authorities. But this is not the case. The evidence collected by the Dekhan Riots Commission is sufficient to show, if other evidence were wanting, that the existing law is not only defective in theory but oppressive in practice, and my opinions are shared by those whose authority to speak on Indian subjects no one could question. Looking round this table, I can appeal to Sir S. Bayley, who, writing in April 1882 as Resident at Hyderabad and with the experience which he had acquired in Bengal and Assam, was of opinion that the present system of imprisonment for debt is not wanted to compel payment, while it may be used to bring undue pressure to bear on a debtor, and that this is especially the case in an agricultural country where land is generally given as security for debt; to Sir Theodore Hope, who, in the speech which he made in 1879 in introducing the Dekkhan Agriculturists' Relief Bill, stated the case against the present system more forcibly and concisely than it had ever been stated before; to Sir Auckland Colvin, who was himself a member of the Dekkhan Riots Commission; and to Sir Charles Aitchison, who intimated very

clearly in 1882 that, but for 'the weight of learned opinion' by which he was embarrassed, the Punjab Government would then have been ranked among the decided opponents of the present law.

"With Sir T. Hope's permission I will read to the Council some extracts from his admirable and exhaustive speech on the Dekkhan Relief Bill. In referring to the provisions of the Bill with respect to the mode of enforcing execution of a decree, he expressed himself as follows:—

'As to execution against the person by arrest and imprisonment, I rejoice to state that it is now considered expedient to abolish it altogether. Imprisonment will still be inflicted as a punishment for fraud detected on insolvency; but that is a totally different thing. The maintenance of imprisonment for debt, as found in the Indian law, is equally indefensible in principle and in practice. As to principle, the Dekkhan Riots Commission make clear that point, utilising the opinions of John Stuart Mill. Their appendices teem with evidence in detail as to the extortion and wrong of which the warrant of arrest becomes in practice the engine. Unacknowledged payments, fresh bonds for sums unadvanced, life-long slavery and even female dishonour may all be obtained—the first three constantly, by the mere production of the warrant of arrest without enforcement. They say, for instance, that in 1874 "it would seem probable that somewhere about 150,000 warrants had been used as threats only." The outcry against imprisonment from officers well qualified to judge of it has been uniform and persistent. Its abolition is unanimously recommended by the Dekkhan Riots Commission. Mr. Pedder and Miss Nightingale have in *The Nineteenth Century* brought the evils it causes prominently before the British public. Sir Erskine Perry gives its abolition his "unqualified approval" in a note dated December 1st, 1877. Judicial officers and pleaders take the same view as the Executive. Were it even defensible in theory, which we have seen that it is not, the abuses to which, in a country like Western India at least, it is proved to lead in practice afford sufficient ground for its condemnation in the districts to which the Bill is to apply. * * * Imprisonment was, at best, a barbarous device to meet the case of a debtor's concealing his property or refusing to give it up. Under the draft Bill, it will be quite unnecessary for these purposes, and reserved for cases of flagrant fraud or dishonesty in insolvents. In this altered position I trust that no hesitation will now be felt by the Council in abolishing a system which has been proved to be grossly abused as an engine of extortion, and is in opposition to the legislation of the civilized world.'

"These are the opinions of an officer whose experience was derived mainly from the Bombay Presidency. Let me add equally weighty testimony from another part of India. This is what was said by the Lieutenant-Governor of the North-Western Provinces in 1882:—

'5. Sir A. C. Lyall has long been of opinion that the powers of subjecting a debtor to arrest and imprisonment should not be entrusted to the decreeholder, but to the Courts only; and, in leaving with the Courts the authority to imprison, he would limit its exercise

to cases in which clear proof should be shown of fraud or dishonest evasion of payment on the part of the judgment-debtor. The existing practice of placing in the creditor's hands the power of selecting his own method of coercion is, Sir A. C. Lyall believes, a relic of the old semi-barbarous debt laws which has now been eliminated from almost every civilised code of judicial procedure. The retention of this process in our Indian code would, upon this principle, be justified only by showing that it was specially required by the circumstances and conditions of the administration of the debt law in this country; and Sir Alfred Lyall does not think that any such imperative reasons for retaining it can be adduced.

'6. It has been argued that, by restricting the process of arrest to cases of proved dishonesty or contumacious refusal to pay debts, the debtor would be given an opportunity for getting out of the way, and thus evading arrest if the Court should determine to order it. But, in the first place, the position of an absconder from process is a very uncomfortable one; so that only the class of debtors who now run away from the creditor are likely to run away from the Court; and, in the second place, the additional risk that would be imposed on the creditor in his realisation of bad debts seems quite worth incurring for the purpose of relaxing the severity with which the present system operates against all debtors, honest and dishonest, indiscriminately. Of the persons arrested, only a comparatively small number seem to be actually imprisoned after arrest; and this fact has been taken to prove that most of these debtors were able to pay but refused to do so till arrested. But it is at least quite as probable an explanation that the debtor, when arrested, preferred, rather than go to jail, to accept any terms which his creditor chose to dictate to him, and to save himself from prolonged imprisonment by executing or renewing bonds on hard or ruinous conditions, or by mortgaging or selling all his property, including property exempt by law from attachment under a Civil Court decree. The effect of arrest, in neutralising the legal exemptions from attachment, seems indeed to merit particular attention. For although section 266 of the Code of Civil Procedure provides that certain things shall be exempt from attachment under a decree, the provision can be practically of little use when the creditor can, by exercising or threatening to exercise his power of arrest, compel the debtor to give up any property whatsoever that he may possess. The Judicial Commissioner of Oudh has cited, as an instance of the difficulty which creditors would experience in realising their debts if the power of arrest were abolished, the case of a debtor who holds a pension, which the law forbids the Court to attach, but who owns no other tangible property. It is argued that such a man may be made to pay his debt while the law allows him to be arrested, but might defy his creditor if the power of arrest were removed. But, according to this view of the case, it is clear that the power of arrest now operates in a great degree to annul the exemption from attachment assigned by law to the pension, since the creditor, though he cannot directly attach the pension, can imprison the pensioner till he comes to terms that may be equivalent to its transfer.

'7. There may be cases falling under section 259 of the Code of Civil Procedure in which it may be necessary to reserve power to the Court to order the imprisonment of a

judgment-debtor who has wilfully disobeyed the Court's specific order, for instance, in the case of a suit for the recovery of a wife. (I will remark here, parenthetically, that I wish to reserve my opinion as to the expediency of a law which enables a husband to obtain the imprisonment of a contumacious or runaway wife, but this question does not arise on the present Bill, which is confined to money debts. To proceed with my quotation.) But all such cases would fall under the rule of dishonest or contumacious evasion; and it would be quite sufficient to invest the Court with discretion and authority sufficient to enforce its own specific mandates. And the reservation of the power of personal coercion to the Courts would prevent the process being employed, as there is reason to believe it occasionally is employed, to gratify a vindictive feeling on the part of the creditor, as in cases where there has been a quarrel, or where a debtor, knowing himself to be insolvent, has favoured another creditor at the expense or to the disadvantage of the decreeholder.

'8. Sir A. C. Lyall would therefore advocate the entire abolition of the process of arrest for debt, so far as it is a process that can be set in motion at the discretion of the creditor, and would allow the Courts to order arrest only on proof of fraudulent and contumacious attempts to defeat the operation of a decree.

'9. It is possible that the abolition of the power of arrest would make the recovery of debts somewhat less easy; but, granting this, the law is not bound to go beyond a certain limit in aiding creditors, and in Sir A. C. Lyall's opinion it goes too far when it leaves to creditors uncontrolled power of imprisoning their debtors. Imprisonment is especially hard on the cultivator and working man, whom it deprives of their means of subsistence and of providing for their families, and these are the classes who probably are most frequently imprisoned.'

"There is no branch of the law which more intimately affects the welfare of the poorer classes throughout India than the law of debtor and creditor; and if the Government of India entertains an opinion that that law is seriously defective it would incur a grave responsibility if it were to hesitate or unduly delay to give its opinion practical effect.

"Why then, I may be asked, did not the Government of India undertake legislation in 1882 or 1883? The answer is that it would have been inconvenient and inexpedient to do so at a time when analogous legislation was still under discussion in Parliament. The English legislation of 1869 proceeded on the sound principle that provisions for the relief of the honest debtor should be accompanied by provisions for the punishment of the fraudulent debtor. The Debtors Act of 1869, which abolished imprisonment for debt, as such, contains two Parts, of which one is headed '*Abolition of Imprisonment for Debt*' and the other '*Punishment of Fraudulent Debtors.*' Concurrently with it was passed the

Bankruptcy Act of 1869, which remodelled the system of bankruptcy for England, and with reference to which the penal provisions of the Debtors Act are framed. Now in 1882 and 1883 the English bankruptcy law was in the legislative crucible, and it appeared to me that, much as the Indian insolvency law stood in need of amendment, it would be desirable to defer proposals for its amendment until the new English law had been passed, and some little experience of its working had been obtained, and that then, and not till then, would be the proper time for dealing with the cognate subject of imprisonment for debt. As soon as the new English Bankruptcy Act had become law I set about the preparation of a corresponding measure for India, but the preliminary steps occupied some time, and it was not until a fortnight ago that I was able to introduce the Indian Bankruptcy Bill into this Council. The main provisions of that Bill will operate only within the Presidency-towns and a few other like places, but it contains one Part, the Part headed 'Fraudulent Debtors and Creditors,' which applies to the whole of British India. This part is taken from the English Debtors Act of 1869, as amended by the English Bankruptcy Act of 1883. When read with the Indian Penal Code, it will be found to contain those full and strong powers for the arrest and punishment of fraudulent creditors and debtors which are the essential adjuncts of every proper bankruptcy law. Therefore I am now in a position to say that I have already brought forward those proposals for the amendment of the penal law which in the opinion of the Parliament of 1869 were the proper supplement and corollary of proposals for the relief of the innocent debtor.

"I may add that the interval which has elapsed since 1883 has not been wholly unfruitful of results. I was anxious to fortify myself with information about the law of imprisonment for debt in foreign countries, and through the kindness of Sir H. Maine I obtained from Her Majesty's representatives abroad a series of interesting reports on that subject. A summary of those reports has been published, and fully bears out the statement made by Sir T. Hope in 1879 that the existing Indian system is 'in opposition to the legislation of the civilized world.'

"I have described the steps which were taken with reference to this subject in 1881, and have explained why legislation was not initiated as an immediate consequence of those steps. It remains for me to explain the nature of the proposals which on behalf of the Government of India I am bringing forward now. Having regard to the authority and experience of some of those who are opposed to a change in the law, and bearing in mind the immense diversity of circumstances and conditions which prevails throughout this vast peninsula, we thought that, while we should not be justified in further delaying legislation, our

most prudent course would be to confine its application in the first instance to some one province where the balance of authority, administrative and judicial, is clearly and strongly in its favour. There is such a province. I have read to the Council the opinion that was expressed by the Lieutenant-Governor of the North-Western Provinces and Chief Commissioner of Oudh in 1882, and I am in a position to say that the opinion which Sir A. Lyall held then he holds after four years' further experience now. His opinion was briefly but emphatically endorsed by the Hon'ble Judges of the Allahabad High Court, who were, and are, strongly in favour of abolishing imprisonment for debt as such.

"Under these circumstances I propose that the measure which I am asking for leave to introduce should apply in the first instance only to the North-Western Provinces and Oudh, but that it should be capable of extension hereafter to other provinces by the Local Governments with the previous sanction of the Governor General in Council. From the opinions which were received from Lower Burma in 1882, and again with reference to the draft Bankruptcy Bill which was published last year, there appears to be a strong feeling in that province in favour of abolishing imprisonment for debt where the debtor has not been guilty of fraud. But on the whole I think it is preferable that the primary application of the measure should be confined to the territories under one Local Government only, and that its effect there should be ascertained before the Act is extended to other parts of the country. The Bill follows generally the principles of the English Act of 1869, by enacting that a Civil Court shall not imprison for debt except in certain specified cases, and that in those cases imprisonment is to be treated not as a measure of coercion but as a punishment. The excepted cases are—

"*(a)* where the order is for payment of a fine;

"*(b)* where the defaulter is a trustee or person acting in a fiduciary capacity, and the decree or order requires him, as such, to pay any money which is in his possession or under his control, or any money for which he is accountable and of which he has not discharged himself;

"*(c)* where the Court is satisfied that, since incurring the liability in respect of which the decree or order was made, the defaulter has fraudulently transferred, concealed or removed any part of his property, or committed any other act of bad faith in relation thereto, with the object or effect of impeding the enforcement of the decree or order by the attachment and sale of his property;

"(d) where the Court is satisfied that the defaulter either has, or has had since the date of the decree or order, the means to pay the money, and has refused or without reasonable cause neglected, or refuses or neglects, to pay the same.

"In these excepted cases the debtor may be sentenced to imprisonment for a term not exceeding six months: he is to be imprisoned in the civil jail, but is nevertheless to be subject, as nearly as circumstances admit, to the discipline prescribed in the case of a criminal prisoner undergoing simple imprisonment, and his creditor is not to be liable to pay subsistence-money for his maintenance in prison. It appears to me that these consequences logically follow from the theory that imprisonment is inflicted as a penalty and not as a screw. The liability of the judgment-creditor to maintain his debtor when in jail existed under the old insolvency law in England, and the Act which imposed it was once described as giving the creditor 'the power of imprisoning and tormenting his debtor at the expense of 3*s*. 6*d*. per week.' I regard it as a bad qualification of a bad law, and think that the law and the qualification should disappear together.

"These are, very briefly, the main provisions of the Bill. For its subsidiary provisions I must refer the Council to the Bill itself and to the Statement of Objects and Reasons, both of which I propose to publish at once. The Bill is comparatively short and simple, but the subject with which it deals is as important as any that have ever engaged the attention of the Indian legislature."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also introduced the Bill.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and such other languages as the Local Governments think fit.

The Motion was put and agreed to.

OUDH WASIKAS BILL.

The Hon'ble MR. QUINTON moved for leave to introduce a Bill to declare certain allowances collectively known as Oudh Wasikas to be pensions within the meaning of the Pensions Act, 1871. He said:—

"Certain allowances, locally known as Amanat Wasikas, Zamanat Wasikas and Loan Wasikas, are paid by the British Government to the descendents of certain

relatives and dependants of the Bahu Begam and the Vazirs and Kings of Oudh. Till the year 1880 no doubt was entertained that these allowances were pensions within the meaning of the Pensions Act, 1871. In that year it became desirable on financial grounds to commute one of the largest of them, and, a dispute having arisen as to the person entitled to receive the capitalized amount of the allowance, the Government had to consider whether it could safely pay the amount under cover of the Pensions Act to the person who appeared to be best entitled. The Hon'ble the Advocate General inclined to the opinion that a Wasika was a pension within the meaning of the Act, but thought there was a good deal to be said in favour of the opposite view. As the sum involved was so very large that the Government would not have been justified in incurring any risk in disposing of it, a special Bill was introduced into the Legislative Council and passed as the Táj Mahál's Pension Act, 1881.

"This step, which the Government was compelled to take for its own protection, necessarily suggested a doubt as to the applicability of the Pensions Act to Wasikas.

"As it is expedient on political considerations that there should be no room for question as to the applicability of the Act to Wasikas, the Government has decided to introduce this Bill to remove the doubts created by the legislation of 1881."

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also introduced the Bill.

The Hon'ble MR. QUINTON also moved that the Bill and Statement of Objects and Reasons be published in the *North-Western Provinces and Oudh Government Gazette* in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 23rd June, 1886.

S. HARVEY JAMES,
Offg. Secretary to the Govt. of India,
Legislative Department.

SIMLA;
The 11th June, 1886.

Note.—The Meeting fixed for the 2nd June, 1886, was subsequently postponed to the 9th idem.

Govt. C. B. Press, Simla.—No. 162 L. D.—16-6-86.—400.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Viceregal Lodge, Simla, on Wednesday, the 23rd June, 1886.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of the Punjab, LL.D., K.C.S.I., C.I.E.

The Hon'ble C. P. Ilbert, C.S.I., C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble Sir T. C. Hope, K.C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble Colonel O. R. Newmarch.

The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

The Hon'ble Colonel W. G. Davies, C.S.I.

DEBTORS BILL.

The Hon'ble MR. ILBERT moved that the Bill to amend the law relating to Imprisonment for Debt be referred to a Select Committee consisting of the Hon'ble Sir S. Bayley, the Hon'ble Mr. Quinton, the Hon'ble Peári Mohan Mukerji, the Hon'ble Rao Saheb Vishvanath Narayan Mandlik and the Mover.

The Hon'ble SIR THEODORE HOPE said :—

"Having for many years devoted a good deal of my time and attention to the improvement in various ways of our cumbrous and unsuitable Civil Procedure Code, and especially to the question of imprisonment for debt, I need scarcely say that I hailed with the very greatest pleasure the disposition to deal with that most important subject which was indicated in the recent speech of our hon'ble colleague the Law Member on the Bankruptcy Bill; and although the few words which then fell from him indicated that the measure which he contemplated was at most but a limited one, still I waited with great interest for the development of his scheme, and his exposition of the grounds of the conclusion at which he had arrived. Having had the advantage on the last occasion of our meeting of hearing the case put out in full, I hope that I may be permitted to say that his argument in favour of the abolition of imprisonment for debt

altogether appears to me to be unanswerable, and his reply to the objections brought against that measure to be complete. It seemed to me that the whole question could not be better summed up than in the two statements which my hon'ble friend put before us, namely, that 'imprisonment for debt, as such, ought to be abolished in India as it has been abolished in England and other civilized countries, but that in India, as in England, imprisonment should be retained as a punishment in those cases where indebtedness involves an element of fraud'; and further that, 'if the Government of India entertains an opinion that the law is seriously defective, it would incur a grave responsibility if it were to hesitate or unduly delay to give its opinion practical effect.'

"Now, following such an effective exposition of the whole case as that, I viewed with more regret than ever my hon'ble friend's conclusion that the measure ought at present to be confined to one administration only in the whole of British India; but I must confess that my heart altogether sank within me as I listened to his final opinion that the effect of that application to one Local Government only ought to be ascertained before the Act was extended to any other parts of the country. I would invite the Council to consider how very great must be the delay involved in such a postponement, and what a considerable period must elapse before the working of the Act in the province to which alone it is to be extended can be ascertained in such a clear and satisfactory manner as to satisfy objectors in other parts of India. This question, I may remind the Council, is not even one dating from the year 1879, when, as our hon'ble colleague the Law Member reminded us the other day, I brought it before this Council in connection with the Dekkhan Raiyats Bill. It goes back farther than that. Two years previously the battle raged, and in 1877 I succeeded in carrying an amendment of the Civil Procedure Code Bill, connected with the subject, which now is to be found as section 336 of that Code—that is to say, nearly ten years have elapsed since this question began to be placed actively before this Council from time to time. Now, the Dekkhan Raiyats Act of 1879, as my hon'ble colleague has stated, has fully justified the expectations entertained at the time as regards its provisions relating to imprisonment for debt. That Act, I am glad to say, has gradually been living down both the theoretical objections and practical obstruction with which it was at first for a long time assailed. Each year's report has established more clearly the soundness of its principles and the beneficial effect of its fundamental provisions; and no report that I have seen has been more convincing on this point than the very last one which we have received. But, notwithstanding all this, seven years have elapsed before that experience has been considered sufficiently strong—has carried sufficient weight—to enable the question of imprisonment for debt to

be again brought before this Council. The evil, however, is no less than it is characterized, and is one that is very severely felt. I hold in my hand a vernacular petition which I received a few days ago from twenty-one debtors confined in one of the civil jails of the Bombay Presidency. These persons, we may all be glad to see, take an interest in the proceedings of this Council. At any rate, they have addressed me in the vernacular, saying how glad they are that their woes have at last come to the notice of the Supreme Government, and praying that they may receive early relief. I need scarcely say that they are careful to suggest likewise that whatever measure is brought in may have retrospective effect! Now, how much longer, I would ask, is the state of things, or the injustice, as I might more rightly term it, pointed out in this petition to be allowed to continue? It appears to me that we may very well consider whether such delay as would be involved in waiting for the experience of the application of the Act to the North-Western Provinces before it is allowed to be extended to any other parts of the country is really necessary or not. I should say that the other Governments might just as well accept the experience which they have already got from the seven years' working of the Bombay Act as wait for the several years' more experience of the North-Western Provinces. I would farther ask whether they are more likely to be convinced by the experience in the latter case which is yet to come than by the experience in the former case which they have already acquired; if they do not believe in the experience derived in the one case, what reason have we to assume that they are likely to believe it in the other? They will probably, some of them at least, be convinced by nothing except by that actual experience in their own case which is proverbially said to be the only effective mode of convincing the majority of us. Now, I gather that my hon'ble colleague has been unwillingly led to the conclusion, which he felt himself bound to enunciate, as regards this postponement, and that this recommendation for postponement, which I understand he deplores as much as I do, has been brought about by the authority and experience of the opponents whom he finds arrayed against this measure. As far as I am aware, this adverse authority and experience is chiefly to be found in the papers relating to the inquiry which took place in 1881-82. I have again looked into a considerable proportion of these, and I should like, with the permission of Your Excellency, just to read one of the opinions upon which this decision for delay may be held to be based —that is, the opinion given on 12th February, 1882, by the Hon'ble Sir Charles Sargent, the Chief Justice of my own Presidency of Bombay. Sir Charles Sargent wrote as follows:—

'I think it would be highly unadvisable to abolish imprisonment for debt. There is no reason to suppose it offends the public conscience, and undoubtedly, in numerous cases,

affords the only means to the judgment-creditor of obtaining satisfaction of his decree. It should be remembered that the position of a judgment-creditor in this country is one of peculiar difficulty. The legal incidents of the undivided Hindu family, the minute distribution of property occasioned by the Muhammadan law of descent, and, though last, not least, the practice of creating *bénámí* titles so common in this country, afford the dishonest debtor endless opportunities of baffling the efforts of his judgment-creditor to attach his property. In numerous instances the only hope of obtaining payment of a judgment-debt lies in the possibility of putting pressure on the debtor and his relations by the arrest of the former.'

That is to say, the Chief Justice of Bombay considers that a certain mode of recovering private debts is justifiable because it is revolting to the general feelings of those to whom it is even indirectly applied, and that a judgment-creditor may properly recover his claims by subjecting his debtor to a process so distressing that a man's relations, although entirely unconnected with his private affairs, will be forced to come forward and subscribe for his release. I do not think that I need dilate further on the value of such arguments as that. I regret to see that this opinion was endorsed by four other Judges of the Bombay High Court, who disposed of the whole matter in less than half a page of print. Only one other judge, Mr. Justice West, with that caution which might be expected from his well known ability and experience, abstained from committing himself so far, and said that it would be desirable before going farther to institute a careful inquiry into the present working of the system.

"I will now come to the practical conclusion of the remarks which I have ventured to offer, and that is, that I trust that the declaration which our hon'ble colleague made in the course of his speech may not be taken to be an absolute one, and that I trust, moreover, that all the Local Governments will consider the promulgation of this Bill as an invitation to reconsider the whole question upon its abstract merits as they have now been so clearly put forward by our hon'ble colleague, and also upon the actual results of the seven years' Bombay experience now available to them. I would fain hope that His Honour the Lieutenant-Governor of the Punjab may be induced by such fresh consideration to hesitate no longer in throwing over that 'weight of learned opinion' by which in 1882 he felt himself to be embarrassed; that others may also follow the same course; and that upon such support the Hon'ble Law Member himself may take heart of grace, and may be able at any rate to see his way in the Select Committee to following the precedent adopted in the Indian Forest Act, and other Acts, of allowing the Act to apply at once to as many localities as may express a desire for it, and leaving the others to follow whenever circumstances or their own opinions may justify its application.

"By this means—and, as it seems to me, this means alone—can this Council and Your Excellency, its President, be relieved of the painful alternative of continuing in the greater portion of British India a system which is admittedly opposed to the law of other civilized nations of the world, and which the Law Member lately characterised as 'bad for the debtor, bad for the creditor, and bad for the country altogether.'"

The Hon'ble SIR STEUART BAYLEY said:—"I hope not to detain the Council any length of time with what I have got to say about this Bill, but, my hon'ble friend who introduced it having referred to the view which I expressed when Resident of Hyderabad in favour of the principle now introduced, I wish to add that I have since that date had the opportunity of examining the matter a good deal more closely and in the light of the correspondence which was gathered together in 1883. That correspondence included the opinions of selected judicial officers and administrative officers in all parts of India; and, though the majority of opinions was against the abolition of imprisonment for debt pure and simple, there was a very strong element in favour of such modified abolition as Mr. Ilbert has introduced into this Bill; and I can only say that the result of a more lengthened study of the subject has been to confirm me strongly in the conviction that the principle on which this Bill is based is a right and a sound principle. I think the public are perhaps likely to be led away by the use of the expression 'the abolition of imprisonment for debt,' though its meaning is sufficiently clear when you go into the Bill. The Bill does not absolutely and universally abolish imprisonment for debt even in those districts to which it will be applied. What the Bill does propose to do is to take away from the creditor the absolute and irresponsible power that he now has of imprisoning his debtor at his own will and pleasure. As the law now stands in regard to any debtor, whether he be honest or dishonest, whether it be a pardánashin lady, or the father of a family upon whose support they depend, or whether it be a widow with young children, if the creditor applies to the Court for a warrant of arrest the Court has no discretion but to place itself as a passive instrument in the hands of the creditor to carry out his wishes. The Court cannot say in one case 'there seems no dishonesty but merely misfortune, and the debtor should not go to jail'; the Court cannot say in another case 'the debtor has property, you should proceed against his property before you proceed against his person'; the Court, as I have said, is simply a passive instrument in the hands of the creditor. Well, what the Bill proposes to do is to remove this absolute power from the hands of the creditor and to give discretion to the Court, and at the same time it instructs the Court that it is to use this discretion in the matter of imprisonment only when the

debtor is either fraudulent or recalcitrant, that is to say, when he makes away with or hides his property or when he obstinately refuses to pay. Most of the supporters of the law as it at present stands take up the position that in cases of fraud or in cases of recalcitrancy the creditor has really no other means than that of imprisoning the person of his debtor, for getting back the money that is due to him. On this point the weapon remains as before, that is to say, it remains at the disposal of the creditor, but it is to be used through the Court. It may be said that it would be very difficult to convince a Civil Court of fraud. It cannot, however, be very difficult at all events to satisfy the Court, in the words of the law, in cases where the defaulter, having means to pay, has refused *or without reasonable cause neglected* to pay. That is all that has to be proved; and, judging from the manner in which some similar clauses have been worked at home by County Court Judges, it does not seem that the judicial officers will have much difficulty in satisfying themselves on the point or in working the law so as to give sufficient relief to creditors. We are also told that if this Bill were generally applied it would restrict credit by destroying the value of personal security, and some of the objectors go farther and say that, in agricultural communities especially, agriculturists have nothing to offer but personal security, and that in their case it will make credit so difficult that they will probably not be able to get money when they want it, and that therefore they will not be able to pay the land-revenue. That is one of the strongest arguments against the measure. Well, I think that there is here a little confusion of ideas about personal security. True, the agriculturist without rights of occupancy has no landed security to offer, but what he borrows on is not the security of his person but the security of the coming crop. For generations and generations this security has been given and accepted; it is now left as it was before in the Bill; and I think we may trust that for generations to come that security will be found to be sufficient by the village-mahájan. But I do not wish to minimise the effect which the Bill is likely to have on credit. I think that in a limited class of cases in which people borrow money having absolutely nothing against which the creditor can go, and in which he is bound therefore to trust to the small benefit of putting his debtor in jail,—in those cases I have no doubt that the Bill will restrict credit, and I think that anybody who watches the cases of insolvency in our Presidency-towns will say that in those cases credit is rightly restricted, and that the ultimate result will be to put the whole relations of that class of cases on a much better footing than they are at present.

"I wish to avoid going over the whole extent of ground traversed in the speech of my hon'ble friend when he introduced the Bill, so I will not emphasise one strong point, namely, the extraordinary anomaly that imprisonment for debt

may be used to defeat certain provisions of the legislature. Those provisions are that the bare necessaries of life are to be left to the debtor, and that in certain cases a debtor's pension should not be touched; but, as Mr. Ilbert pointed out, bringing this threat of imprisonment to bear, you can make a man give up his implements of agriculture, or make him transfer his pension; and then what possibly remains of those provisions which it was the object of the legislature to keep in force? But I do want to lay some emphasis on the fact that under this Bill the creditor will be very little, if at all, worse off than under the existing law in regard to those who *will not* pay, and that in regard to those who *cannot* pay the provisions of the existing law are a cruel scandal and a discredit to our administration. I suppose that, out of every five hundred warrants for arrest issued, not more than one is ever followed by the arrest of the debtor. They are used *in terrorem*, to make him give fresh bonds, practically to make him bind himself for life; and it is in this respect, as a screw for extorting money either from him, or, as our colleague Sir Theodore Hope has pointed out, from his friends and relatives, that the real power of arrest is useful to the creditor. If I am allowed I should like to read a few sentences from one of the papers that came up in 1883 which shows how this power was stated to be used in the district of Kandeish. The report is by the District and Sessions Judge of Kandeish, and in it he wrote as follows:—

'The liability of the creditor for his debtor's subsistence while in confinement deters the majority of parties applying for execution from seeking this method of redress. It has, more than any other form of enforcement, the effect of lessening the debtor's prospects and means of payment at the very moment when his obligations become most pressing. Further, it spreads the distress, arising from the inability to pay, over a wider circle, leaving those who are dependent on the personal labour or exertions of the debtor in a state of destitution. As a matter of fact, the creditor seldom or never carries into execution the power thus given him over his debtor. He prefers to stop short of the last step; and though he applies for enforcement of execution by imprisonment, he does it only that he may hold the warrant *in terrorem* over his judgment-debtor and, when opportunity offers, exact more advantageous terms for himself.'

"And then he goes on to say:—

'In former years, to judge from reports, this power was frequently exercised by the saukárs to assist the most flagitious designs on the females of the debtors' families. There is ground for hope that this most heinous abuse is dying out if not extinct; but still the saukárs appear to aim at involving, if possible, in their claims the mother or wife of the principal debtor. Their reason for doing so is not far to seek, and affords an instance of the most flagrant abuse that is now made of the law of arrest for debt. It is simply a more ingenious form of the torture and pressure applied to extort from the judgment-debtor the entire surrender of his present and future property and his personal

labour. If the Kunbi or the Bheel fears confinement for himself, the prospect is not less alarming to him when it threatens to consign to imprisonment in the district jail an aged mother or a youthful wife. He is willing, rather than submit to such pain and degradation, to consent to almost any terms, however impossible of fulfilment, and, if he is unable to offer to his creditor any property in existence, he consents to resign his own liberty of action by becoming a saldár (or yearly servant) to the creditor or the purchaser of the decree. There is thus ground for believing that the statement made in former reports is literally true, that "in the Satpuras the Bheels are bought and sold as slaves." The shortest personal experience in this district teaches us that the facts are not exaggerated. A number of bonds, even as they appear on appeal, bear not only the signature of the actual borrower but also that of the wife or mother; nor is this practice confined to the Bheel debtors; it is equally common in the case of Kunbis. The execution of a deed by the wife or mother is regarded as an excellent security; under the circumstances none could be more effective for the creditor's purposes. The number of salkhuts (agreements to service for a year) in satisfaction of decrees is a sufficient confirmation of the statement that the personal labour of the indebted classes is a matter of traffic among creditors. Decrees pass from hand to hand, and with them the livestock which represent the only means of satisfying them.'

"Well, I must repeat the fact that under the existing law the Courts of Justice are the mere passive instruments of carrying out oppression of the above kind; that it is a great blot in the existing system; and that it is a duty which the Government of India ought not to postpone longer than is absolutely necessary to remove that blot and put the law on a proper footing. As Mr. Ilbert has informed the Council, we have obtained from the Secretary of State a report from almost every country in which Great Britain has Consular Agents of the state of the law in regard to this subject; and, having looked through that report, I find that in almost every country of Europe and America the existing law is on the lines on which we propose to base this new Bill. In France and Italy, in Portugal and Spain, in the German States and Austria, in Sweden, Norway and Denmark, in the United States of America mostly, and in most of the States even of Southern America, imprisonment for simple debt is a thing of the past; and in all those countries where imprisonment remains it is as a punishment for conduct either fraudulent or recalcitrant. I am now speaking only of ordinary civil debts. The only countries apparently in which the law stands as it is in India are the Ottoman Empite, Tunis, and some parts of Russia. Well, I have referred to the correspondence which took place in 1883, and, as I have said, the majority of the officers consulted were against any material alteration of the law. I think, notwithstanding what has fallen from my hon'ble friend Sir Theodore Hope, that in this state of the case the Government of India were justified in not attempting to force in the face of public opinion an advanced measure and to apply it at once to the whole of India. I think they were justified

in making it an experimental step and in applying it only to the North-Western Provinces and Oudh, where both the High Court and the Local Government are strongly in favour of it. It occurs to me as possible that the difference of opinion which is so marked in those papers has perhaps for its foundation a not very obscure difference of circumstance; that those authorities who for the most part had under their eye agricultural operations and the interests of the agriculturists were strongly in favour of altering the law at the earliest possible moment; whereas those authorities who dealt mostly with cases of a commercial nature did not see their way so readily to making any alteration of the law. Be that as it may, I think that in the face of the opposition shown at that time the Government of India were bound to apply the Bill in the first instance to a limited area where it was shown that there was a sufficient authority in favour of it. I can only say that I most heartily concur in the hope and wish expressed by my hon'ble friend Sir Theodore Hope that other Local Governments will soon follow the example of the North-Western Provinces and Oudh; and I hope that the reproach will soon be removed from India of having on the subject of imprisonment for debt a law which is more backward than that of States like, let us say, Egypt and Servia in the Old World and like Venezuela and Montevideo in the New."

The Hon'ble MR. ILBERT said:—"I am very much indebted to my hon'ble colleagues for the effective support they have given to the measure which I introduced at the last meeting of this Council. My hon'ble friend Sir Theodore Hope is quite right in supposing that, if I had felt myself at liberty to act in accordance with my own opinion of what the law ought to be, I should have given wider application to the measure; but in saying, as I did, that I thought it preferable that the primary application of the Bill should be confined to the territories under one particular Local Government, I merely wished to indicate my view as to the course which, in the presence of the body of opinion now before us, it would be most prudent and politic to take. The extent of the application of the Bill is a question which it is within the competency of the Select Committee to consider; and if the authorities of any other province should, in the light of the further experience which has been acquired since the discussions of 1881-82, and after having seen what are the actual proposals of the Bill,—should these authorities express an opinion that the Bill should be extended at once to that province, I should be extremely glad if the Select Committee could see their way to modifying the Bill accordingly."

The Motion was put and agreed to.

OUDH WASIKAS BILL.

The Hon'ble MR. ILBERT, on behalf of the Hon'ble Mr. Quinton, also moved that the Bill to declare certain allowances collectively known as Oudh Wasikas to be pensions within the meaning of the Pensions Act, 1871, be referred to a Select Committee consisting of the Hon'ble Sir A. Colvin, the Hon'ble Mr. Quinton and the Mover.

The Motion was put and agreed to.

INDIAN PORTS ACTS ACT, 1875, AMENDMENT BILL.

The Hon'ble SIR A. COLVIN moved for leave to introduce a Bill to amend the Indian Ports Act, 1875. He said:—

"The grounds on which it is desired to introduce the measure indicated on the notice-paper is this. Certain steamers are engaged in the coasting trade of the Madras Presidency, but are not 'coasting steamers' within the meaning of the expression as defined in Part III of the Schedule to the Indian Ports Act, 1875. They have therefore to pay port-dues at every port they call at in a group, instead of only paying them at the first port they call at and being free at every other port in the group for a period of thirty days. The owners of these steamers represented to the Government that the levy of these full port-rates at every port the steamers call at is a considerable hardship and is detrimental to the trade which their steamers are fostering, and they have asked that their steamers may be treated as coasting steamers. The Government of India is of opinion that the law, as it stands at present, bears hardly not only on these steamers engaged in the coasting trade, but also on other steamers and sailing vessels. The provisions of the law at present applicable to ports within the limits of the Madras Government do not extend to the ports situate in the Bombay Presidency, where the existing practice is similar to that which it is the object of the proposed Bill to render legal. The financial effect of the measure on the local port trust funds will not be considerable. It appears therefore desirable that the law should be amended generally for all vessels calling at ports in the Madras Presidency. The present Bill has been prepared in consultation with the local authorities and Chamber of Commerce. With the object of settling the port-dues on as fair and liberal a basis as is consistent with obtaining a sufficient income, the Bill recasts Part III of the First Schedule to the Indian Ports Act on the lines indicated in the Statement of Objects and Reasons which I think it unnecessary to recapitulate here."

The Motion was put and agreed to.

GUARDIANS AND WARDS BILL.

The Hon'ble MR. ILBERT moved that the Hon'ble Syud Ameer Hossein be added to the Select Committee on the Bill to consolidate and amend the law relating to Guardian and Ward. He said that he was very glad to be in a position to reinforce the Select Committee by the appointment of a representative of the Muhammadan community.

The Motion was put and agreed to.

PUNJAB TENANCY BILL.

The Hon'ble COLONEL DAVIES moved for leave to introduce a Bill to amend the law relating to the Tenancy of Land in the Punjab. He said:—

"MY LORD,—Eighteen years having nearly elapsed since the Punjab Tenancy Act was passed, it will, I think, be convenient if, before explaining the grounds on which it is proposed to amend it, I briefly describe to Your Lordship and the Council the circumstances under which it was passed, and the general scope and character of the measure itself.

"When, after the Sikh wars of 1845-46 and 1848-49, the Punjab was annexed to the British possessions in India, one of the earliest and most important duties which fell to the revenue-authorities of the time to perform was the making of what is called a settlement of the land-revenue. This, as is well known, consists of two operations—the assessment of the revenue, and the framing of a record of the rights and interests of all who are in any way connected with the land from the produce of which the revenue is paid. The inquiries made by the officers who were charged with this duty showed that the agricultural population of the Province was chiefly made up of cultivating communities of small peasant-proprietors; but interspersed among these in varying proportions were found persons who, though they might not in the eyes of the country have a claim to proprietary right, had cultivated the lands in their occupation for long periods on almost the same footing as the recognised proprietors, and had moreover in many instances been the first to reclaim those lands from waste. The officers who made the earlier regular settlements, following in this respect the well-known twelve-year rule which had been in force in the North-Western Provinces, whose revenue-system had been authoritatively introduced into the Punjab, caused a large proportion of these non-proprietary cultivators to be shown in the settlement-records as having rights of occupancy. No opposition on the part of the proprietors themselves was made to this proceeding; on the contrary, they

everywhere showed a readiness, amounting almost to eagerness, to induce men of this class to share with them, on almost any terms, the new and then much-dreaded responsibility of our system of fixed cash-assessments; and the terms generally recorded were that for the period of settlement these tenants should hold their lands on payment of the quotas of revenue assessed thereon, with the addition sometimes of a small proprietary fee, or málikána, varying from five to ten per cent. on the revenue.

"But by the time some of these first regular settlements came to be revised, circumstances had greatly changed, and with them the attitude of the proprietors towards this class of tenants. Fifteen years of peace and settled government, combined with improvements in communications, had greatly developed trade and raised prices; and the landlords had begun to look with a covetous eye on the large profits which these tenants were now enjoying, and in which, by the conditions of the expired settlements, they had hitherto been debarred from sharing. Their cause was vigorously taken up by the Settlement Commissioner, Mr. Prinsep, and, on the ground that great mistakes had been made during the first settlements in creating, in disregard of local customs, rights of occupancy on the basis of mere length of occupancy, a general inquiry into the status and rights of these tenants was instituted in the districts of the Lahore and Amritsar Divisions, and resulted in reducing two-thirds of these tenants to the position of either lease-holders for various terms or mere tenants-at-will.

"Two opposite views were taken of these proceedings. On the one side, it was contended that they amounted to a wholesale confiscation of rights of long standing which had been created and guaranteed by the British Government. On the other hand, it was urged that the entries relating to these rights had been made without sufficient inquiry, and without due regard to the superior rights of the landlords—rights of which the exercise might for a time have been suspended owing to the oppressive character of the Sikh revenue-system, but of which the memory was still tenaciously cherished, and which, in consequence of the moderation of our assessments, had once more become valuable.

"The Act was a compromise between these conflicting views, and was based on the results of long and careful inquiries into the relations of proprietors and tenants during Sikh times, made from the best sources of information then available.

"The immediate effect of the measure was to restore to the greater number of occupancy-tenants the status of which the proceedings of the Settlement

Commissioner and his subordinates had deprived them. But it, at the same time, greatly improved and strengthened the position of the landlords by giving them what they really wanted—the means of obtaining a fair share of the profits of the lands cultivated by these tenants. Apart from this, the chief value of the Act was that it defined with precision the rights of occupancy-tenants, and regulated the relations of the landlords with tenants of all classes. To use the words of our present Lieutenant-Governor in a Minute on this question written in 1882, 'it is probably in its main principles the nearest approach to the old law and custom of the Province in respect of occupancy-right that could at the time have been hoped for'; and, quoting again from an opinion left on record by the late Lieutenant-Governor, 'in spite of its many imperfections, Sir Robert Egerton regards this much-controverted measure as one of the greatest boons conferred on the Punjab by the administration of Lord Lawrence: regarded by some, at the time, as a confiscation of proprietary right, it has been found defective only in the comprehensiveness of its provisions for maintaining the status of tenants, while in the greater part of the Province it is the bulwark and charter of a contented peasantry.'

"In the revision of the Act now proposed it is not contemplated to depart in any important particular from the principles and policy to which it gave expression, but to confine the operation to the correction of mistakes which had crept into it owing to the haste with which, in its later stages, it was passed through the Council, and to supply defects which subsequent experience of its working has shown to exist.

"The first proposals for the amendment of the Act were made in 1876 by the Financial Commissioner, Mr. (afterwards Sir R.) Egerton, with the general concurrence of the Judges of the Chief Court. But the Lieutenant-Governor (Sir Henry Davies), thinking it inexpedient to reopen questions of principle which had been fully discussed and decided when the Act was passed, confined himself to advocating a few minor modifications in the law. The Government of India was, however, unwilling to resort to legislation until its necessity had been further demonstrated, and the matter for the time was allowed to drop.

"More recently, during the revision of the settlement of two of the districts of the Province, facts have come to light which show that certain provisions of the Act have caused, and, if allowed to stand, would be likely to cause, hardship to this class of tenants. The Famine Commissioners in

their report have also made numerous proposals with a view to improving the relations of landlords and tenants generally, many of which have been accepted and introduced into the revised Rent and Tenancy Acts of other Provinces. I propose, with the permission of Your Lordship, to say a few words on each of these subjects.

"In one of the two districts referred to—that of Sirsa—the question which arose between landlord and tenant was mainly one of title. Eighty years ago the tract of country comprised within the limits of this district was uninhabited waste. It was colonised chiefly by immigrants from the surrounding Native States, where, while there was no limit to rent, there was no practice of ejectment. Up to the commencement of the regular settlement of 1852 there was no restriction on the power of the individual colonists to break up as much of the waste as they chose, on condition of paying the customary rent and dues on their cultivation, and in practice each cultivator held the land reclaimed by him undisturbed so long as he made these payments. At the first regular settlement, however, the proprietorship of each estate was declared to belong *exclusively* to the leaders of the body of colonists who had settled in it, or to the representatives of those persons who had first received permission from the State to found a village therein; and it was further declared that the ordinary cultivators would thenceforth have no right to break up land without the permission of those to whom proprietary rights had been granted. At the same time, however, rights of occupancy in the land then held by them were granted to the cultivators from whom proprietary rights had been withheld. The result of this settlement was that the whole area of the district—nearly two million acres—was declared to belong in proprietary right to about 5,000 persons, while the remaining 25,000 cultivators were recorded as holding under them as tenants, with rights of occupancy in about nine-tenths of the half million acres cultivated by them.

"When this settlement came to be revised, twenty years later, it was found that considerable changes had taken place in the interval. Occupancy-rights had been lost or abandoned in about a fourth of the area in which those rights had been recorded, but, on the other hand, a large proportion of what was uncultivated waste when that record was framed had been brought under the plough, and, owing to the decision above referred to, so much of this newly reclaimed land as had been broken up by the tenants was shown in the annual papers as held without a right of occupancy. Thus at the revision of settlement it was found that of the total cultivated area of more than a million of acres, about two-fifths were held by tenants without any right

of this kind. Up to 1874, when the term of the first settlement was about to expire, the Punjab Tenancy Act had little effect on the Sirsa District. The area of unreclaimed land being still very large, it was to the interest of the proprietors to have as much of it as possible brought under the plough; and they had therefore encouraged their tenants to extend their cultivation, and ejectment-proceedings were almost unknown. But the proprietors, hearing that the settlement would soon be revised, now began to fear that, unless they asserted their rights, the same procedure might be followed at the revised as had been adopted at the regular settlement, and that the tenants might be recorded as having rights of occupancy in all the land cultivated by them. They accordingly set to work to issue notices of ejectment under the Act in great numbers. This was done apparently, not so much with the object of actually ousting their tenants or of raising their rents, as of clearing their own title by establishing their right to eject the tenants from the lands which the latter had reclaimed since the first settlement. During the six years ending in October, 1880, notices of ejectment were served on the tenants of 64,500 acres, or about a sixth of the area held by tenants without rights of occupancy. On the other hand, the tenants, accustomed to be left in possession of their cultivated lands so long as they paid the rent due on them, felt that they were being hardly treated in being ejected from land which they had themselves in many instances reclaimed from waste. They naturally expected that they would be as fully protected in the occupation of these lands as they had been in the possession of those broken up by them before the first settlement; and in this belief more than half the notices of ejectment were contested by them in Court, while more than a thousand suits were brought on other grounds to establish a right of occupancy in lands held by them. The Courts, however, felt themselves bound by the decision of Government already referred to, according to which the waste land had been left at the absolute disposal of the proprietors; and the result generally was that the tenants' claims were dismissed, and the tenants were compelled either to leave their lands, or to acknowledge themselves as holding at the will of the proprietors.

"In answer to a call made by the Government of India, whose attention had been attracted to the subject by a passage in the Annual Revenue-administration Report of the Province, a special report on the working of the Tenancy Act in this district was submitted in 1881. The Financial Commissioner (Mr. Lyall), concurring with the Settlement-authorities, recommended special legislation with the object of protecting the tenants from ejectment from the lands which they had reclaimed from waste and held for long periods. The chief

grounds for this recommendation were (1) the reasonable expectations formed by the tenants that they would be maintained in the occupation of these lands; (2) the injurious effect of these wholesale ejectments on the well-being of the district; and (3) the arbitrary nature of the grant of proprietary rights in the waste at the first settlement to a few persons whose claim to those rights was not, in any marked degree, superior to that of their fellow-colonists, to whose co-operation, rather than to their own labour, the development of the district and the value of their rights were mainly due.

"In reporting these circumstances to the Government of India in October, 1882, the Lieutenant-Governor (Sir R. Egerton), though holding that a law to enable Settlement-officers at the time of settlement to fix the rents of tenants with rights of occupancy would be an undoubted advantage, did not consider that the need of special legislation for this district had been established. But the Government of India, in replying to the Punjab Government in the following May, stated that it was not disposed to accept the view that the evils brought to light did not afford a sufficient case for legislation; that, on the contrary, they seemed to demand decisive action; and that, if, under this view, the amendment of the Punjab Tenancy Act, as a whole, should seem to the Lieutenant-Governor to be required, the magnitude of the question would not deter the Government of India from entering upon it. It was added that, before forming any definite conclusions on this question, the Government wished to have the opinion of Sir Charles Aitchison, who, by this time, had succeeded to the charge of the Province.

"Before describing what followed on this communication, it will, I think, be well to complete the history of the struggle between the landlords and tenants of this district. Towards the end of 1881 the latter were informed by Sir R. Egerton's order that their relations with the former would continue to be regulated by the Tenancy Act of 1868, and, finding that the Courts held that under the provisions of that Act they were liable to be ejected from land broken up by them since the date of the first settlement, they accepted the position and acknowledged themselves to be at the mercy of the landlords as regards these lands.

"A somewhat remarkable result followed on the submission of the tenants. In many cases the landlords either sold or made a free gift of occupancy-rights in such land to their tenants, and the result was that on the completion of the settlement-record in 1882 it was found that, in place of 350,000 acres held with rights of occupancy, more than 420,000 acres were now so held. Since then the

Government has itself conferred rights of this kind in 80,000 acres on the cultivators in certain villages which were held in farm, and the total area held with rights of occupancy is now about 500,000 acres, or half the total cultivated area of this district. The rents of all tenants of this class were fixed by the Settlement-officer, but under the present law these rents are liable to enhancement every five years, and I am sorry to have to add that a number of suits for enhancements have already been instituted.

"I may now return to the main line of my narrative. The views of Sir Charles Aitchison were expressed in a Minute, which, with a Memorandum by the late Financial Commissioner (Mr. J. B. Lyall), was forwarded to the Government of India in the beginning of July, 1882. While concurring with his predecessors and the Chief Revenue-authority that no radical change should be made in the principles and policy of the existing Tenancy Law, the Lieutenant-Governor was of opinion that experience had shown that a few modifications in the mode of applying those principles in practice were urgently called for. The most important of these related to the system under which enhancements of rent were made.

"As just stated, the existing law prescribes that on certain specified grounds the Courts on the suit of the landlord may decree enhancement at intervals of five years.

"Statistics, the Lieutenant-Governor wrote, showed that suits of this kind were increasing; that a difference of interest was thus making its appearance between landlords and occupancy-tenants, which in time might embitter the relations between these classes; and, as the most suitable remedy for this evil, he proposed to revert to the law formerly in force in the Punjab, and empower Settlement-officers to fix the rents of occupancy-tenants paying in cash, in terms of the revenue, and for the period of settlement. I may here mention that a precisely similar recommendation, based on the same grounds, had been made by the Famine Commissioners, whose proposals on this subject had about this time been circulated for the opinions of Local Governments and Administrations. As bearing directly on the subject I am treating of, I may perhaps be allowed to quote a short passage from that portion of their report which deals with the relations of landlord and tenant in Northern India. In paragraph 26 of this section they wrote as follows:—

'The chief scope which our system affords for the exercise of the antagonistic feelings which, as stated in paragraph 19, exist between the two classes is in the Rent Courts, where the landlord can sue for enhancement of rent. These suits are extremely perplexing in their

character; they involve a great deal of minute and laborious inquiry into the soils and the current rates of rent, and the decisions of the Courts have often been conflicting; such circumstances give encouragement to litigation, and leave a feeling of bitterness behind them when the suits are decided. It is to the interests of all parties and of the State that litigation of this kind should be discouraged as far as can be fairly done with due regard to the claims of either side. Under the present law a landlord who has sued a tenant for enhancement of rent can sue him again after a period of five years in the Punjab, ten years in the North-West Provinces, one year in Bengal, and the same in the Central Provinces, in respect of a "conditional" occupant. Moreover, as the landlord can sue his tenants in detail in successive years, the sore is constantly kept open. We are of opinion that most of these evils could be avoided by reverting to the original principle, under which the rent of privileged tenants could be altered only at the same time as the revenue, and had to be fixed periodically by the same officer who fixed the revenue.'

"But to return from this digression. The case of the Sirsa tenants was then discussed by the Lieutenant-Governor, and the conclusion arrived at by him was that, in the face of the clear grant of proprietary right to others, it would not be just or expedient to create by legislation occupancy-rights which might or might not have accrued if circumstances had been different. But he agreed with the Financial Commissioner in thinking that compensation for disturbance should be given to these and to all other tenants who had broken up waste-land. A few less important alterations in the law proposed by Mr. Lyall were also supported by Sir Charles Aitchison; and his proposals having met with the general approval of the Government of India, instructions were issued, towards the end of the year, to the Financial Commissioner to prepare, in consultation with the Settlement Commissioner, a draft Act comprising such of the amendments proposed as Mr. Lyall was prepared to accept, and such others as he himself might wish to see adopted.

"While these matters were still under consideration, reports were received which showed that a burning question relating to enhancement of rents had arisen in the Hoshiarpur district, then under settlement. It was pointed out in these reports that this district is exceptionally situated in respect to the number of holdings of tenants of this class paying at revenue-rates with or without the addition of a cash málikána, or proprietary fee, rarely exceeding two annas in the rupee; that these tenants, more than 90,000 in number, were liable under section 11 of the Act to have their rents raised to 'the rate of rent usually paid in the neighbourhood by tenants of *the same class* for land of a similar description and with similar advantages,' less only a deduction of fifteen per cent.; and figures were furnished showing that the cash-rents paid by tenants-at-will were seldom less, and were often more, than twice and even

three times the revenue assessed on the land held by them; further, that though these rents were paid on only a very small portion of the whole cultivated area, the area so held was large enough to enable proprietors to base their enhancement claims on these exceptionally high rents. At the same time it was confidently expected that the occupancy-tenants would firmly resist the claims to these severe enhancements, and it was argued that they would be right in so doing, for the reason that these cash-paying tenants-at-will were not, as regards the tenancies on which these high rents were paid, *of the same class* as the occupancy-tenants; and in explanation of this it was stated that these exceptional rents were paid for land usually cultivated by the owner, but let to men who, having other land of their own, were willing to pay a high rent for one or two additional plots to be cultivated with spare stock and at spare moments. For these and other reasons it was anticipated that long and harassing litigation was impending, which, besides ruining the parties to it, would generally and permanently embitter the relations between these two important sections of the agricultural population; and on these grounds the Settlement Commissioner, strongly supported by the Financial Commissioner, recommended that application should be made to the legislature either to pass a short enactment temporarily introducing into this and other districts under settlement the revised provisions for enhancement contained in Chapter III of the Draft Bill, or a law giving to the Local Government power to suspend the decision of suits for enhancement of rents for a certain period. Sir Charles Aitchison was, however, unwilling to advocate special and emergent legislation of this kind, and preferred to proceed with the revision of the Tenancy Act for the Punjab generally. Up to the present time the old light rents have been in most cases maintained, because they are in accordance with entries in the old settlement-record, which under section 2 of the Act have the force of agreements; and the Chief Court has, by recent decisions, held that these agreements remain in force until the new record-of-rights is handed over to the Deputy Commissioner of the district, under a direction of the Local Government on the report of the Financial Commissioner that the operations of the settlement are completed. Under these circumstances the Government has purposely refrained from giving a direction of this kind in regard to the records of the settlement of this district. It is obvious that, unless the law is altered, the same difficulties will arise in other districts now under settlement as those which have arisen here.

"These are, my Lord, the circumstances which have led to the proposal to revise the Tenancy Law of the Province, and, having described them, I will add

a few words regarding the form which it is proposed that legislation shall take. The Draft Bill framed by the Financial and Settlement Commissioners in April, 1883, did not altogether meet with the approval of the Lieutenant-Governor, and for reasons which were fully explained at the time (but which I need not occupy the time of the Council by repeating, as the whole of the correspondence on the subject will shortly be placed before it if this Motion is carried) he was at first inclined to limit legislation, if undertaken at all, to minor modifications involving no very important principles, and such as were required mainly for the purpose of removing ambiguities and correcting mistakes and omissions, of partially enlarging the provisions relating to the more privileged classes of tenants, and of affording a limited protection to tenants who had earned a right to special consideration by breaking up waste land.

"After some further discussion in correspondence with the Government of India, it was decided that legislation should proceed on this basis; and further that, reverting to the law and practice with respect to the fixing of the rents of occupancy-tenants which had been in force in the Punjab before the passing of the Act of 1868, those rents should be adjusted, at the time of revising the assessment, with reference to the land-revenue instead of at short intervals by comparison with the rents paid by tenants-at-will. These conclusions were communicated to me in February, 1884, some time after I had succeeded Mr. Lyall in the office of Financial Commissioner; and I was asked, after consultation with Colonel Wace and any other officers whose views I might wish to ascertain, to prepare and submit a revised Bill, together with a full exposition of my own views. I thereupon circulated for opinions both drafts—that prepared by Mr. Lyall and Colonel Wace, and the more limited draft prepared in the Punjab Secretariat—to some of the most experienced Revenue-officers of the Province. Their replies were considered by a Committee consisting of Mr. Barkley, Colonel Wace and myself; and we came to the unanimous conclusion that, as the existing Tenancy Act requires so much alteration and so many additions, it would be best to replace it by an altogether fresh enactment in which the law on this subject would be placed before the people, and those who would have to administer it, in the most complete and simple form possible. Taking, therefore, as the basis of our draft the Bill submitted to the Punjab Government in April, 1883, we revised and rearranged it, and then submitted it to our own Government. This was done in June, 1884.

"During the course of the past summer the proposals of our Committee were carefully considered by the Lieutenant-Governor, and, in personal communication with both Financial Commissioners, the draft sent up by us was

gone through section by section, and was further revised till it assumed the shape in which it was submitted to the Government of India in November last.

"With the permission of the Council I will now explain the more important changes in the existing law proposed to be made by the Bill which I am asking for leave to introduce.

"The first is the omission of section 2 of the present Act, by which a highly artificial authority was given to entries in the records-of-rights of the first regular settlements in regard to certain matters dealt with by the Punjab Tenancy Act. The section as originally framed and passed ran as follows :—

'Nothing contained in this Act shall affect the operation of any decree of Court under which a tenant holds, or of any agreement between a landlord and a tenant when such agreement is in writing or recorded by the proper officer in the record of a regular settlement sanctioned by the Local Government.

'All entries in such record . . . . in respect of matters comprised in Chapters III, IV, V and VI of this Act shall, when attested by the proper officer, be deemed to be agreements within the meaning of this section.'

"The chapters specified in this second clause refer—III to rent, IV to ejectment, V to relinquishment, leases and under-leases, alienation and succession, and VI to compensation for tenants' improvements. The effect, therefore, of this section was practically to exclude from the operation of nearly the whole of the Act all parts of the Punjab in which a regular settlement had been made and sanctioned by the Local Government. The only part of the Act to which this clause did not apply was Chapter II, which dealt with 'rights of occupancy.' The object of this clause was clearly to give a character of conclusiveness to the entries in the records of the first regular settlements in regard to the several matters treated of in the chapters specified therein. Whether it was intended to have prospective as well as retrospective effect was very fully discussed by Sir James Stephen when presenting the Report of the Select Committee on the Bill which afterwards became the Punjab Land-revenue Act of 1871; and the question was decided in the negative by the introduction into this clause, by section 21 of the Act, of the words which have restricted its operation to entries in the records of settlements made *previously to the passing of the same Act.* It is now proposed altogether to omit this section, on the ground that it has done its work and is no longer required. To show that this is the case as regards the second clause of the section, I would mention that, of the regular or revised settlements

sanctioned before the 18th November, 1871 (the date of the passing of the Land-revenue Act), those of only four districts still remain in force. Of these, two are already under revision, and these, with the remaining two shortly to be taken up, will be completed within the next six years. The provisions of this clause have, therefore, ceased to apply to 27 out of the 31 districts of the Province, and will cease to apply to the remainder from periods varying from two to six years. I may add that many of the entries in the old settlement-records relating to matters dealt with in Chapters III to VI of the Act do not accurately represent local customs, are often so ambiguous that the Courts on this ground have refused to enforce them, and are not unfrequently opposed to public policy. So far as the clause has had a beneficial effect in enabling local custom to override the law, provision has been made in the Bill for the maintenance of this useful object. As regards rent, the revised provisions of Chapter III will do much to give the custom hitherto prevailing the force of law; and, in respect of alienation and succession, special provision has been made in section 38 for keeping alive such customs as may be applicable to such subjects. But where custom is found to be opposed to public policy—as, for instance, where it would prevent tenants from making improvements, or deprive them of compensation for improvements on ejectment—we propose deliberately to set it aside, and section 46 of the Bill declares entries of this kind in the records *void*, as being contrary to public policy. As to the first clause of section 2 of the Act of 1868, it seems sufficient to say that decrees of Court cannot of course be affected by subsequent legislation which does not in express terms deal with their subject-matter, and agreements stand on their own merits, whether they are entered in a record-of-rights or not. The fact is, the whole section was obviously enacted to set at rest the controversies of eighteen years ago already referred to; and as the records of Mr. Prinsep's revised settlements of certain districts were annulled by the Tenancy Act of 1868 in important matters relating to the status of tenants, it was thought advisable to declare in express terms to what extent they would be maintained. The revision of these records, rendered necessary by the passing of this Act, was shortly afterwards carried out, and the first part of the section has therefore long since ceased to be of any practical use.

"Next to this come the changes in certain of the clauses of section 5 relating to rights of occupancy. The object of these modifications of the law is to extend the benefits of these clauses to certain classes of tenants who appear to be equitably entitled to them, but who, according to the interpretation put upon these clauses by the Chief Court, have hitherto been excluded from their bene-

fits. The first of these changes consists in the omission of the word '*heretofore*' from clause (*1*) of this section (section 4 of the Bill), and the addition of an explanatory sub-section by which, on proof by the tenant of continuous occupation of his tenancy for thirty years and payment of nothing in the shape of rent beyond land-revenue and rates and cesses, a presumption is raised in his favour that the conditions of clause (*1*) have been fulfilled. This alteration of the law was first proposed by the late Financial Commissioner, Mr. J. B. Lyall, in a Memorandum on proposed amendments of the Act written in 1882, from which, with the permission of your Lordship, I will quote the relevant passage :—

'I would certainly,' he wrote, 'strike out the word "heretofore" in clause (I) of section 5. It may be argued that this is a deviation from the great principle expressed in the first sentence of section 9. If it is so, I would allow an exception in this case. By a recent decision of the Chief Court, which is no doubt legally correct, no tenant can establish a right under clause (1) of section 5 unless the land had been held free of rent and service for three generations in 1868. Before that decision was published, many Courts had been decreeing in favour of tenants now holding in the third generation, though they did not so hold in 1868. Most Settlements-officers, I think, interpreted the law in that way. I do not think the law amended as I propose would give a tenant a right greater than he may be held to be equitably entitled to. On the other hand, very few tenants can possibly establish a right under the clause as interpreted by the Chief Court. Except in the districts of the old Delhi territory, it is almost certain that the grandfather of the tenant of 1868 must have died before annexation, perhaps long before. Few men now survive who can give evidence as to those times, and there are no records to refer to.'

"In forwarding on to the Government of India a copy of this Memorandum with a Minute by the Lieutenant-Governor the proposed change was supported by the Punjab Government in the following words :—

'Mr. Lyall suggests that this amendment may involve a deviation from the principle that no occupancy-right shall be acquired by mere lapse of time. It does not, however, appear that this is so; for the reasons for acknowledging the right depend not upon any particular duration of tenure (for obviously the time during which the land may pass through the hands of grandfather, father and son may vary enormously in different cases), but rather upon the custom of the country, and perhaps also on the circumstance that the proprietor stands by and sees two successions take place without interference.'

"The amendment, together with others proposed at the same time, was accepted by the Government of India, and when the Bill to give effect to them was drafted the explanatory sub-section already referred to was added. The object of this addition is to place a reasonable limit on the evidence to be required of a tenant claiming under this clause. It is contended that, if a tenant can show that he succeeded his father or uncle, and that he and his father and uncle

together have held on these favourable terms for thirty years, it is only reasonable to throw on the landowner the burden of proving that the grandfather's or granduncle's tenancy was of a different nature. It is not often that older evidence would be forthcoming, and, if it is obtainable, it should be for the owner to produce it.

"In a recent criticism it has been objected that these changes in the law will have the effect of converting into occupancy-tenants of the most privileged class many thousands of tenants in the districts of the old Delhi territory who are now recorded as tenants-at-will only, and are paying at the same rates as the proprietors, as it will probably, in many cases, be impossible for the landlords to rebut the presumption given by the 'explanation' referred to. This may be, and probably is, quite true; but, if so, the reply to the objection is that, although recorded as tenants-at-will, these tenants are, by the ancient custom of the country, entitled to hold the lands occupied by them undisturbed, so long as they pay the quotas of revenue assessed thereon. If proof of this be wanted, it will be found in abundance in the Settlement Reports of that part of the Punjab, and in particular in the admirable Report on the Settlement of part of the Karnal District by Mr. Ibbetson, who in paragraphs 257 to 259 has given a full and interesting history of the origin and growth of tenant-right in those parts. In the latter paragraph he writes :—

'In short, as already pointed out in paragraph 241, the conclusion is irresistible that, in old times, any body who broke up new land, or even who was given old land to cultivate, except as an obviously temporary measure, acquired a right to hold the land so long as he paid the revenue on it.'

"These tenants, I would explain, belong largely to the same classes as the landowners, and the fact that no rent, properly so-called, has been hitherto demanded from them is partly due to this cause, but more still to the excessive pressure of the old assessments, in consequence of which, to quote again from Mr. Ibbetson,—

'the village was only too glad to get cultivators to accept land on these terms; and the explanation of the fact that the people even now fail to distinguish between occupancy-tenants and tenants-at-will of any standing is, not that old custom failed to raise the ancient tenants approximately to a level with owners, but that it treated both owners and tenants of all kinds alike, so far as the right of cultivating possession was concerned.'

"Much more might be quoted in support of this view, but I think I have said enough to show that where the position of the so-called tenants-at-will is so strong as it is in this part of the Punjab, and where they can show an

unbroken occupation of three generations, or of thirty years, and the payment of no rent beyond revenue and cesses throughout this period, it is only equitable to give them the same status, and the same protection from ejectment and undue enhancement of rent as that which was given by the first clause of section 5 of the Act to the almost precisely similarly circumstanced tenants of 1868. Nor will the proprietary bodies have any fair cause to complain of this change, for whereas they have up to this time been receiving nothing from these tenants but revenue, and rates, and cesses, they will, under section 15 of the Bill, be enabled to obtain from them in addition a proprietary fee of two annas in the rupee.

"The next alteration in this section which seems to call for notice is that made in its third clause. The clause has been so worded now as to admit to its benefits not only those who were at the date of the passing of the Act of 1868 the *representatives* of persons who settled as cultivators in a village along with the founders, but also the settlers themselves. There can, I think, be no doubt that the exclusion of the latter by the framers of the existing Act was intentional, but there is at the same time good reason for believing that the exclusion was contrary to the custom of the country, and, as remarked by the Lieutenant-Governor in the Minute already referred to, it involved a somewhat grotesque anomaly, namely, that a man should not be possessed of what his heir can inherit from him, and that his heir should take from him rights larger than those which he himself enjoyed. Instances have come to light in which cultivators who had held from the founding of a village up to 1868 were denied rights of occupancy merely because they had survived the date of the passing of the Act, whereas if they had died before that date the right would have accrued to their heirs. The removal of so anomalous and unjust a restriction seems to require but little justification. An explanatory sub-section with respect to this clause has been added at the end of the section, the object of which is the same as that of the sub-section relating to clause (*1*). The opportunity of the revision of this clause has been taken to require evidence of *continuous* occupancy, which the Chief Court has held is not necessary under the clause as it at present stands, but which was certainly its intention.

"The last change I have to explain in this section is in clause (*4*), and this has been rendered necessary by a decision of the Chief Court, who have held that a right of occupancy can only be acquired by the jágírdár or ex-jágírdár himself, and not by his representative. The right in such cases has its origin in the position of authority held by the jágírdár under Sikh rule, which gave security to his tenure; and provided the land was originally occupied by the jágírdár during

the continuance of the jágír, and has since been uninterruptedly occupied by him and his representative for the term of twenty years, as originally fixed in this clause of the Act, there seems no good reason for excluding the latter from the right given by this clause. On the contrary, the fact of his having succeeded in maintaining his cultivating possession of the land after the death of the jágírdár strengthens his claim to recognition of this right.

"The two last alterations have been effected by so defining the word 'tenant' as to include the *predecessors* and *representatives* in interest of a tenant.

"The only other amendments in this chapter are those in section 6 (section 5 of the Bill) and section 9. The alterations in the former are purely verbal and make no substantial change in the law. They will be found fully explained in the Statement of Objects and Reasons. The change in the latter section consists of the correction of the generally recognised mistake in its second clause, which, in place of providing that joint owners of the common lands of a village shall not acquire occupancy-rights in those lands, enacted that no right of occupancy shall be acquired in the common lands of a village held on a pattidári tenure. The clause, as it stands, has been a great stumbling-block to the Courts generally, and conflicting decisions have been pronounced under it by the superior Courts. In 1871 the Financial Commissioner (Mr. Egerton) held that the bar to the acquisition of rights of occupancy laid down by it related only to the claims of proprietors cultivating land of which they were joint-owners, and did not exclude claims by others who were not members of the proprietary body. In the following year the Chief Court took the opposite view. The interpretation put upon the clause, as it stands, by the latter Court is undoubtedly the more correct one, but a study of the blue-book containing the discussions which took place prior to the passing of the Act leaves no doubt that the decision of the former Court gives more accurate expression to the custom of the Province, and to what was probably the intention of the legislature, in regard to this particular provision of the law.

"I pass on to Chapter III, which deals with the important subject of rent. By the changes made in this chapter power has been restored to officers engaged in making and revising assessments of the land-revenue to fix at the same time the rents of occupancy-tenants, and the present scale for the enhancement and reduction of the rents of these tenants has been readjusted so as to bear a fixed relation to the land-revenue demand. The grounds on which these alterations have been made have already been sufficiently explained, and I will only

touch briefly on the detailed provisions for giving effect to the change of policy in this respect, which, as before remarked, is based on the recommendations of the Famine Commissioners, and has received the approval of the Government of India.

"Ordinarily the cash-rents of occupancy-tenants will be revised only when the assessment of the land-revenue undergoes revision, and the officer who determines the sums payable by the landowners as land-revenue will, at the same time, fix, with reference to these sums, the rents to be paid by their occupancy-tenants according to the scale laid down in section 15 of the Bill. But circumstances may occur which may render it only equitable to grant, *at other times*, to the landlord or tenant, as the case may be, enhancement or reduction of the rent originally fixed. For instance, it may, on the one hand, be found that when the Bill becomes law the revenue in some districts has been raised, but the rents of this class of tenants have not been adjusted to the enhanced assessments according to the new scale, or, at any other time, that the area of land held by the tenant is greater than that for which he has hitherto been paying rent; or, on the other hand, that the area of the tenancy has been reduced by diluvion, or its productive powers have been decreased by any cause beyond his control. In all such cases it is only right and fair that the Revenue-officers should have power to revise the rents of these tenants *at any time*, on the application of the landlord or tenant; and accordingly this power has been given to them by section 10. The rents of grain-paying tenants cannot of course be subject to the ordinary law of enhancement and reduction, and will therefore only be capable of revision under the circumstances described in sections 14 and 16.

"As to the scale for enhancement and reduction of rents laid down in section 15, it is based on the assumption that the land-revenue is half of what is on an average paid by tenants-at-will, or the full rental of the estate; and an attempt has been made so to graduate the maximum rents for the several classes of tenants described in sections 4 and 5 of the Bill as to correspond approximately with the existing scale in the third ground of section 11 of the Act. It is not pretended that the correspondence is exact; indeed, it may be safely asserted that any nearer approach to an exact arithmetical correspondence therewith would be unfair to the landlords, who, owing to the fact that the grain and cash rents paid by tenants-at-will have almost everywhere very largely exceeded twice the land-revenue, have under the present law been able to obtain unduly severe enhancements, but who, on the assumption on which the scale in section 15 of the Bill has been

calculated, would obtain nothing but *bare revenue* from the most privileged class of occupancy-tenants, and would themselves be liable to pay the rates and cesses! Such an anomaly as this was of course never contemplated, and could not be allowed to exist in any scheme of future legislation. The legislature in framing the Act of 1868 evidently intended that even the highest class of occupancy-tenants should be liable to some slight enhancement, or, in other words, that the landlord should have the right to demand from them something more, though perhaps not much more, than revenue and rates and cesses; and this the proposed legislation, while improving the position of occupancy-tenants as a whole, will secure to them.

"The only other point which I think I need notice in this chapter is the addition of a section (19) which empowers Revenue-officers, when allowing a suspension or remission of the land-revenue, to direct a proportionate suspension or remission of rent. This has been inserted with reference to principles laid down by the Government of India in a circular issued in 1882, and approved by the Secretary of State.

"Chapter IV of the Act, which treats of 'relinquishment and ejectment,' has been redrawn with a view of clearly distinguishing the procedure to be adopted in ejecting a tenant with a right of occupancy from that to be observed in evicting a tenant-at-will. The procedure in both cases has been made as simple and complete as possible. The only other notable change in this chapter is the omission of clause (2) of section 19 of the Act, which enables a landlord to buy out the lowest class of occupancy-tenants. This clause, I must explain, was introduced into this section at the strongly expressed desire of the then Lieutenant-Governor, Sir D. MacLeod, who attached great importance to it and believed that the powers given by it to landlords would be extensively made use of; but, as a matter of fact, it has been almost, if not quite, a dead letter. The retention of this novel provision was, I may add, strongly opposed at the time by certain members of the Council, on the ground that it was wrong in principle and opposed to the custom of the country; and, during the final debate on the Bill, words were added, on the motion of Sir R. Temple, which limited its operation to the lowest class of occupancy-tenants, and to those of this class who had been less than thirty years in occupation of their tenancies. As, owing to the lapse of time, the clause must have become wholly inoperative, it has been determined to omit it from the Bill.

"In Chapter V, on 'Alienation of, and Succession to, Right of Occupancy,' the following are the more important amendments. A new section (36) has

been introduced with a view to the protection of the interests of a tenant having a right of occupancy who makes an invalid alienation of his right; and in section 37 of the Bill it is proposed to substitute the ordinary law of succession for the somewhat artificial rule for the devolution of the right of occupancy prescribed in section 36 of the Act. The former change has been rendered necessary by a series of decisions of the Chief Court, which have laid down that the previous offer of the tenancy to the landlord is a condition precedent to the valid exercise of the power of alienation vested in the tenant by section 34 of the Act, and that, if without making such offer the tenant transfers his land to any other person, the landlord can sue for, and obtain possession from, the transferee. But whether the tenant has forfeited his right by making the invalid transfer is a point which has been left in doubt by these rulings, and it is proposed to set this doubt at rest in favour of the tenant. Inasmuch, however, as the landlord is put to trouble and expense in proving the alienation to be invalid, it is considered equitable that he should be allowed to purchase, should he wish to do so, the right which was improperly alienated. The latter change is one which has been introduced tentatively. It is believed that it will be found to be in accord with the general views of both landlords and tenants, and the decisions of the superior Courts show that it is certainly supported by custom, so far as the grant to the widow of a life-interest in her deceased husband's right of occupancy is concerned. Whether the alteration is right in other respects is a point to which special attention will be called with a view to local inquiry and report. It will be seen that by section 38 of the Bill the provisions of sections 5 and 7 the Punjab Laws Act are duly saved in regard to this matter, and the effect therefore of section 37 is to introduce the ordinary law of succession where no special custom affecting these tenures can be proved.

"The subject of compensation to tenants on ejectment (*a*) for improvements made by them, and (*b*) for disturbance in the case of certain tenants, is dealt with in Chapter VI of the Bill. The changes and additions which have been made in this chapter under the first heading are, for the most part, the result of rulings of the superior Courts of law under sections 25 and 37 of the Act; and it will, I think, be sufficient if I draw attention to the more important omissions and defects which have in consequence been supplied and remedied, without referring particularly to the decisions on which they are based. These latter have been collected together and reprinted in a convenient form, arranged according to the different sections of the Act to which they severally relate, and are available for reference when required by the Council.

"The present Act is altogether silent as to who may and who may not make improvements, and the conditions on which they may be made. These matters are provided for in sections 39 and 40 of the Bill. By the former an absolute right of making improvements is given to an occupancy-tenant, while the latter lays down that a tenant-at-will may only make improvements with the assent of his landlord. The most important provision on the subject of compensation for improvements is that contained in section 41 of the Bill, which provides that in all cases in which compensation is found to be due to a tenant on ejectment it shall be paid to the officer ordering the ejectment before the tenant is evicted. The object of the section is to remove all technical restrictions on the complete adjudication of every claim for compensation which a tenant may have when proceedings are taken for his ejectment. These provisions are called for in common fairness to tenants, and have been rendered necessary by some of the decisions referred to.

"The only other important amendment in this Chapter, namely, the introduction of the new section relating to compensation for disturbance, is the result of a proposal originally made by Mr. J. B. Lyall, supported by the Lieutenant-Governor, and accepted by the Government of India. Its object is to afford a limited protection to tenants who have brought waste land under cultivation. Its justification can, perhaps, be best given by a quotation from the paper in which the proposal was first made. In paragraph 4 of his Memorandum of 18th June, 1882, Mr. Lyall wrote as follows regarding it:—

'When the Tenancy Act was under discussion, many officers were of opinion that it would be in accordance with the custom of the country to give a right of occupancy to all tenants holding land which they had broken up from waste. This proposal was nearly carried. I myself thought at the time, and still think, that the general custom of the country would have justified the insertion of such a provision in the Act of 1868. At the present day there are a few tracts in the Punjab in which such a custom still exists, and is admitted by the proprietors. In other tracts it did exist formerly, but has more or less died out. In most districts, and especially in tracts where breaking up the waste is difficult, there is still a strong feeling among the tenants that a tenant who has cleared the waste ought not to be evicted; and the proprietors themselves generally admit in practice a claim, though they would object strongly to the creation of a positive tenant-right. I do not recommend the addition to section 5 of a clause giving occupancy-right to all tenants who have broken up waste land; but I am strongly in favour of inserting a provision in the Act giving them compensation for disturbance.'

"In supporting this proposal the Punjab Government added that the Financial Commissioner's suggestion amounted 'to a just and practicable compromise between the incidents of a beneficial custom, still strong in

places, but often moribund or insusceptible of judicial proof, and the express language of existing legislation.' As to the justice and good policy of a provision of this kind there will probably be no dispute, though some difference of opinion may arise as to the amount which should be given as compensation for disturbance.

"This, My Lord, is all I have to say in support of the motion for leave to introduce this Bill, and in explanation of the changes which it makes in the existing law. I have, I fear, trespassed too long on the time and exhausted the patience of the Council. If so, my excuse, for the length to which my address has run, must be the magnitude of the subject with which I have had to deal, the many difficult issues involved in it, and the necessity for justifying every material change in a law of this kind, on the proper framing of which the prosperity, peace and contentment of the whole agricultural population of this important Province will largely depend."

The Motion was put and agreed to.

The Hon'ble COLONEL DAVIES also introduced the Bill.

The Hon'ble COLONEL DAVIES also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India* in English, and in the *Punjab Government Gazette* in English and in such other languages as the Local Government thinks fit.

The Motion was put and greed to.

The Council adjourned to Wednesday, the 7th July, 1886.

S. HARVEY JAMES,
Offg. Secretary to the Govt. of India,
Legislative Department.

SIMLA;
The 25th June, 1886.

Govt. C B. Press, Simla.—No. 202 L. D.—1-7-86.—12.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Viceregal Lodge, Simla, on Wednesday, the 7th July, 1886.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.
His Honour the Lieutenant-Governor of the Punjab, LL.D., K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E., V.C.
The Hon'ble C. P. Ilbert, C.S.I., C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble Sir T. C. Hope, K.C.S.I., C.I.E.
The Hon'ble Colonel O. R. Newmarch.
The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.
The Hon'ble Colonel W. G. Davies, C.S.I.

INDIAN PORTS ACT, 1875, AMENDMENT BILL.

The Hon'ble MR. ILBERT, on behalf of the Hon'ble Sir A. Colvin, introduced the Bill to amend the Indian Ports Act, 1875, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Ilbert, the Hon'ble Mr. Hunter and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Fort St. George Gazette* in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

PUNJAB TENANCY BILL.

The Hon'ble COLONEL DAVIES moved that the Bill to amend the law relating to the Tenancy of Land in the Punjab be referred to a Select Com-

mittee consisting of the Hon'ble Mr. Ilbert, the Hon'ble Sir S. Bayley, the Hon'ble Sir A. Colvin and the Mover, with instructions to report within ten weeks.

His Honour THE LIEUTENANT-GOVERNOR said:—

"My hon'ble colleague, when moving for leave to introduce this Bill, explained the reasons for it and its scope so clearly and exhaustively as to relieve me from the necessity or the temptation to take up the time of the Council with any remarks of my own. I may, however, at the present stage of the case be permitted to repeat that this Bill is of very limited scope. It makes no important departure from the present Tenancy Act. In its two most important features, namely, the adjustment of occupancy-rents by the standard of the Government revenue and the adjustment of those rents by the Settlement-officer at the time of settlement, it reverts to the old law and custom of the Punjab. The other changes which it introduces have either been necessitated by practical difficulties experienced in the working of the present law during the eighteen years it has been in operation, or embody interpretations of the law and decisions given by the Civil Courts. In short, the Bill raises none of those delicate and difficult economic questions which so often accompany discussions on tenant-right. Indeed, very great changes will have to pass over the social condition of the Punjab before such questions can assume magnitude in this Province. In the Punjab the land is not, as in some parts of India, concentrated in the hands of large proprietors, to whom the mass of the people stand in the relation of tenants. The Punjab is a country of small landowners and of peasant-proprietors who are their own tenants. The mass of the people are themselves the proprietary body, cultivating their own lands. The average area of proprietary estates is something under 25 acres. In an area of 63½ million acres, something less than 9 millions are tenant-holdings. In a cultivated area of 23½ million acres, 62 per cent. is cultivated by the proprietors themselves, 13 per cent. by occupancy-tenants and 25 per cent. by tenants-at-will. In view of these facts I think the Council may commit this Bill to a Select Committee with some confidence that it is not likely to raise disturbing questions. It is in my judgment a Bill eminently calculated to foster and preserve the friendly relations which happily have hitherto existed in this Province between landlords and their tenants, who are often of the same flesh and blood, and oftener still of the same social class, as the landlords themselves."

The Motion was put and agreed to.

PUNJAB LAND-REVENUE BILL.

The Hon'ble COLONEL DAVIES also moved for leave to introduce a Bill to declare and amend the Land-revenue Law of the Punjab. He said :—

"The law on this subject is contained in Act XXXIII of 1871. This Act was the first attempt to express within a reasonable compass, and in clear language, the various rules and orders—based '*on the spirit*' of the Bengal Regulations—by which the proceedings of Revenue and Settlement officials in the Punjab had up to that time been regulated, and which had acquired the force of law under section 25 of the Indian Councils Act.

"The Act I am speaking of was framed with great care by a master of his art, Sir James Stephen, in close consultation with the then Financial Commissioner, Mr. (afterwards Sir R.) Egerton, and the Lieutenant-Governor, Sir Henry Davies—both men of large revenue and settlement experience. But it is scarcely, I think, to be wondered at that, notwithstanding all the skill and care expended on it, this first attempt to condense and put into legal form a mass of rules and instructions governing one of the most intricate branches of the administration should, when subjected to the test of practical working, have been found to be incomplete in some respects, and to require amendment in others.

"What the principal defects in the existing law are I shall have to explain when I introduce the Bill, but I may now mention that some of them have already formed the subject of correspondence with the Government of India, and many others have, as experience brought them to light, been supplied in the enactments on the same subject which have been framed for other parts of India. Moreover, the recent orders of the Government of India, based on recommendations made by the Famine Commissioners, demand that the continuous operations by which village-records are maintained correct to date shall be disconnected from those other occasional operations by which the assessment of the land-revenue is revised; and, in the endeavour to recast the body of rules which have been issued under the authority of the existing law with a view to the carrying out of those orders, technical difficulties have arisen which render the amendment of the Act a matter of necessity. The simultaneous revision of the Tenancy Act has also suggested certain changes in, and additions to, the Land-revenue Act.

"These briefly are, my Lord, the grounds on which it is proposed to amend the latter Act, and they will, I trust, be accepted by the Council as sufficient to support the motion I have made with this object."

The Motion was put and agreed to.

INDIAN COMPANIES ACT, 1882, AMENDMENT BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to amend the Indian Companies Act, 1882. He said:—

The object of this Bill is to give priority, within certain limits, to the payment of salaries and wages in the distribution of the assets of a company which is being wound up under the Indian Companies Act. Provision to this effect was made by a Statute which was passed in 1883 to amend the English Companies Act, and corresponding provisions will be found both in the English Bankruptcy Act and in the Indian Bankruptcy Bill now before the Council. A recent decision of the Bombay High Court has attracted attention to the fact that there is no similar provision in the Indian Companies Act. I propose to insert such a provision, and thus to assimilate the Indian Companies Law to the English Companies Law, and the Law relating to Insolvent companies to the Law relating to Insolvent individuals."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also introduced the Bill.

LOWER BURMA GAOLS DELIVERY BILL.

The Hon'ble SIR S. BAYLEY moved for leave to introduce a Bill to make provision for the more speedy trial of certain accused persons in custody in Lower Burma. He said:—

"The necessity for, and the object of, this temporary measure are best given in the words of the Chief Commissioner, from whose report, with Your Excellency's permission, I will read. A letter dated the 12th June, 1886, from the Secretary to the Chief Commissioner, runs as follows:—

'During the past five months some eleven districts* of Lower Burma have been disturbed by large gangs of rebels or dacoits. Villages have been burnt and numerous atrocities committed. The number of persons who have taken part in these disturbances has been very large. Some 1,500 have already been arrested, and numerous arrests continue to be made daily. Order has now to some extent been restored, but there are several gangs still at large, and there is little hope that the province will be restored to its normal condition for some months to come. Every effort has been made to cope with this outbreak of crime in accordance with the ordinary procedure, and two officers in succession

Shwegyin.	Henzada.
Toungoo.	Tharrawaddy.
Pegu.	Prome.
Hanthawaddy.	Thayetmyo.
Bassein.	Thatôn subdivision, of Amherst.
Thôngwa.	

(Mr. Ireland and Mr. Copleston) have been appointed Additional Sessions Judge for the purpose of assisting in the disposal of cases. But it has been found that something more than this is necessary if the large number of prosecutions now pending are to be disposed of with reasonable promptitude. There are at present over 1,000 prisoners in custody who have not yet been brought to trial; some of them have been over five months in jail; and to dispose of all these cases under the ordinary procedure will occupy many months. This is unfair to the prisoners themselves, some of whom may be innocent, and it is inconvenient to the Government, inasmuch as the overcrowded condition of our jails cannot be relieved until the cases of these prisoners have been disposed of. Moreover, as explained in Mr. Hodgkinson's note, there is reason to fear that, in some cases at least, guilty persons will escape punishment if their cases are not promptly brought to trial.

'Accordingly the Bill now submitted has been drafted with a view to introducing in the disturbed tracts, subject to certain safeguards, a more summary procedure than is admissible under the ordinary law. Sir Charles Bernard hopes that it will not be necessary in very many cases to sentence prisoners to long terms of imprisonment, and he believes that it will be possible, when the country has quieted down, to release many of the prisoners before their sentences have expired. In some cases it is probable that a whipping will prove a sufficient punishment for young lads who have joined rebel bands thoughtlessly or under intimidation, and a clause has accordingly been inserted in the Bill authorizing Magistrates to inflict this punishment in certain cases in which a whipping would not be a lawful punishment under the Indian Penal Code. The remaining provisions of the Bill are sufficiently explained in Mr. Hodgkinson's note, in which the Chief Commissioner generally concurs.

'In conclusion I am to submit that Sir Charles Bernard regards it as a matter of importance that some such enactment as that now submitted should be passed into law with as little delay as possible.'

"These are the circumstances under which we have been asked to legislate. The draft Bill which Sir Charles Bernard submitted has been modified in some respects, and the shape which, under the advice of the Legislative Department, it will now take is as follows. It will extend only to those tracts which the Chief Commissioner may notify as disturbed tracts in Lower Burma. In those tracts the Chief Commissioner will have power to appoint District Magistrates and other selected Magistrates of the first class to try cases as Sessions Judges without the necessity of previous commitment.

"The procedure which these officers will follow in that class of cases will be the ordinary procedure of warrant-cases under the Criminal Procedure Code. The offences to which this procedure will apply are mainly offences against the public peace of a violent nature, and are entered in the schedule at the end of the Bill. The decisions of these officers will be subject in the ordinary

course to both the revisionary and the appellate jurisdiction of the Judicial Commissioner, who is the local High Court; but, as it is possible that the Judicial Commissioner will find himself unable to keep pace with those cases, power is given to the Local Government to appoint, with the previous sanction of the Governor General in Council, an Additional Judicial Commissioner, or Additional Judicial Commissioners. The object of this last clause is in case it should ultimately be necessary in some very special circumstances to vest with the powers of the Judicial Commissioner officers such as the Commissioners of Divisions. But at present it is not intended to do that; it is proposed to leave the revisionary jurisdiction of the High Court in the hands of the Judicial Commissioner, and possibly to appoint an Additional Judicial Commissioner to go about and hold circuit. This Additional Judicial Commissioner will work under the ordinary checks of the Criminal Procedure Code. The only alterations of importance we have made are that in these cases of the disturbed tracts we reduce the period during which an appeal can be presented in cases other than capital cases from 60 to 30 days, and, for the reasons given in Sir Charles Bernard's letter, which I have just read out, we allow whipping in substitution of the severer penalties which the Penal Code generally directs.

"I may mention that the Judicial Commissioner, who, as I said before, is a local High Court, has been consulted, and he quite concurs with the Chief Commissioner as to the necessity for providing an effective procedure for these cases, though the procedure which Sir Charles Bernard and the Judicial Commissioner proposed is somewhat more summary than that which we have seen our way to accept. The Chief Commissioner will have the power to remove from the operation of this Bill any tract as soon as it ceases to be a disturbed tract, and we propose that the special law altogether shall expire at the end of the current financial year. I think that the provisions of the Bill will probably suffice to meet the object which Sir Charles Bernard has in view, and I do not think that anything less than a measure of this kind would have the effect."

The Motion was put and agreed to.

The Hon'ble SIR S. Bayley also introduced the Bill.

The Council adjourned to Wednesday, the 14th July, 1886.

S. HARVEY JAMES,
Offg. Secretary to the Govt. of India,
Legislative Department.

SIMLA;
The 9th July, 1886.

Govt. C B. Press, Simla.—No. 222 L. D.—9-7-86.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Viceregal Lodge, Simla, on Wednesday, the 14th July, 1886.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.
His Honour the Lieutenant-Governor of the Punjab, LL.D., K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E., V.C.
The Hon'ble C. P. Ilbert, C.S.I., C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble Sir T. C. Hope, K.C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble Colonel O. R. Newmarch.
The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.
The Hon'ble Colonel W. G. Davies, C.S.I.

PUNJAB LAND-REVENUE BILL.

The Hon'ble COLONEL DAVIES introduced the Bill to declare and amend the Land-revenue Law of the Punjab, and moved that it be referred to a Select Committee consisting of the Hon'ble Mr. Ilbert, the Hon'ble Sir S. Bayley, the Hon'ble Sir A. Colvin and the Mover, with instructions to report within nine weeks. He said:—

"At the last meeting of the Council, in moving for leave to introduce this Bill, I explained briefly the grounds on which it is proposed to amend the land-revenue law of this Province, and I have now to describe the more important changes and additions which the Bill, prepared with this object, makes in that law. In doing this it will not be necessary for me to take up the time of the Council to the same extent as I did when introducing the Bill to amend the Tenancy Act; for there is this broad distinction between the two measures, that, while the latter deals with valuable rights of property, this Bill is concerned chiefly with matters of procedure, the adjustment of which largely depends on considerations of administrative convenience and rarely involves the decision of questions of principle.

"I would first explain that this Bill is the outcome of the discussions of the past three years. Like the Tenancy Bill, the original draft of this Bill was prepared by Mr. Barkley and circulated for opinion to a number of the most experienced Revenue-officers of the Province. When their replies were received it was discussed and amended by a Committee consisting of the framer, Colonel Wace and myself, and lastly it underwent further revision at conferences held last year over which the Lieutenant-Governor himself presided. The two Bills, I may add, are closely connected, and this one has been so framed as to cover the entire jurisdiction of Revenue-officers, whether of a judicial, fiscal or executive character.

"I may pass over without notice the first chapter, which contains the usual definitions and other preliminary matters, and proceed at once to Chapter II, which deals with Revenue-officers and Revenue Courts. The more important changes in this chapter are two—*first*, in the jurisdiction of Revenue-officers to try certain classes of suits, and *secondly*, in the course of appeal from decisions in suits, and from orders on applications. These matters are at present dealt with in Chapter V of the Punjab Courts Act, which it is proposed to repeal, and in section 65 of the Land-revenue Act. By section 45 of the former Act revenue-suits are divided into two groups, the first of which is by clause (*1*) of section 46 reserved for the exclusive jurisdiction of Deputy Commissioners, while suits in the second group are by clause (*2*) triable by Assistant Commissioners and Tahsildárs. The chief aim of these novel distinctions of jurisdiction was, I believe, to reduce the number of appeals. If so, they have perhaps answered their object, but they have at the same time caused much inconvenience. No such distinctions existed before the passing of the Courts Act, and there seems no good reason why Assistant Commissioners and Tahsildárs should not try suits of the kind mentioned in the first group. It is therefore proposed to revert to the former practice in this respect, and base distinctions of jurisdiction on the value rather than on the character of suits. The Local Government, by rules under section 13 of the Bill, will determine by what officers or classes of officers, and up to what limits of value, suits cognizable by Revenue-officers shall be tried. These alterations in jurisdiction to try original revenue-suits have necessitated changes in the course of appeal, and, in place of the somewhat complicated system of appeal prescribed in sections 47 and 48 of the Courts Act, the more simple system set forth in sections 19 and 20 of the Bill has been devised. It will put an end to second appeals in all cases in which the Appellate Court confirms the original decision, and where that Court interferes in any way a further appeal will lie to the Financial Commissioner. In addition to this the powers of revision given to this officer by section 65 of the Land-revenue Act have been enlarged so as

to include decisions of subordinate Revenue-officers when acting in their judicial capacity, but in all such cases an opportunity will be given to the parties of being heard before an order is passed affecting questions of right. There is one other provision to which I ought perhaps to draw attention. Experience since the passing of the Courts Act of 1884 having shown that the subordinate Civil and Revenue Courts do not always succeed in avoiding mistakes as to the respective limits of their jurisdictions, a section (11) has been introduced by which the inconvenience and expense to the parties of setting aside the proceedings, where a Court has decided a suit without jurisdiction, will be avoided by a reference to the Chief Court, who will cause the decree to be registered in the Court which had jurisdiction, if satisfied that the suit was determined in good faith and the parties have not been prejudiced by the mistake of jurisdiction.

"In the next chapter (III), which treats of kánúngos, zaildárs and village-officers, the only point that requires notice is that section 36, which authorises the levy of a cess for the payment of village-officers, remedies a defect in the present law which formed the subject of correspondence with the Government of India some years ago, by enabling the cess to be levied on the owner's and water-advantage rates.

"After this come two chapters (IV and V) which deal with (1) the preparation and maintenance of records-of-rights, and (2) the assessment of the land-revenue. In drafting these chapters the language of the existing law, which describes these two operations under the general term "settlement," has been departed from. This change has been made to bring the law into harmony with the altered policy of the Government of India in regard to revisions of assessment. Briefly stated, the object of this policy is to so organise the ordinary revenue-establishments in each province as to enable them to maintain for each estate a continuous record of its financial and agricultural condition, from which the information required for the assessment of the land-revenue may at any time be obtained, and thereby to save the State from some part of the expense, and the people from the trouble and anxiety, which the existing system of periodical settlements by special establishments entails on them. But it is, I think, right to point out that a change of this magnitude, involving as it does the most careful training and constant supervision of the subordinate revenue-establishments, must be gradually worked up to, and cannot be suddenly introduced. Moreover, it is believed that there are still some districts of which the records are so imperfect that they must be revised on the old system in order to furnish a good basis for future operations under the new one. And entirely new records have to be

prepared from time to time as new estates come into existence. Accordingly provision has been made for this purpose in Chapter IV. The only other point which appears to me to call for notice in this part of the Bill is the addition of a section (48) which gives power to the Local Government to direct that the whole or a portion of a village-cess may be expended on conservancy or other object for the benefit of the estate in which the cess is levied. This is an authority which the Local Government often exercised in connection with the earlier settlements of the Punjab, it is one which is still occasionally needed, and it is to be found in the revenue laws of other Provinces.

"Chapter V, which deals with the assessment of the land-revenue, is so drafted that, while continuing all the provisions of the existing Act relating to this subject, it supplies some important omissions in that law. Among other important points, it expressly declares that the land-revenue is the first charge on the land, its rents and its produce, and further provides securities against the intercepting of any of these sources of income before the Government demand has been satisfied. The absence of clear provisions of this nature has been the cause of inconvenience in the past. It has not unfrequently happened that a decreeholder has attached the rents or produce of a landowner before the latter has paid his revenue, thus leaving the Revenue-officers no remedy except that of proceeding against the produce of the coming harvest, or against the land itself. The only other change in this chapter to which I think I need invite particular attention is in the procedure for giving effect to revised assessments. This will be found in sections 60 to 63. It dispenses altogether with the formality of taking from the landowners or their representatives written engagements accepting the new assessments. But, while doing this, it still leaves the owners at liberty to refuse to pay these assessments, and the consequences of refusal are the same as those which follow on the non-acceptance of an assessment under the present law. Refusals of this kind, however, seldom occur in the Punjab, and the really important point in the procedure lies less in the provisions dealing with these refusals than in the sections (61 and 62) which provide for the hearing of objections and appeals, and thereby obtaining modifications of assessments prior to their confirmation. In a country of small holdings, like the Punjab, an owner cannot afford to decline to pay the assessment fixed; hence the only remedy against over-assessment practically open to him is to appeal and get his assessment reduced; and this is the remedy which he almost always adopts.

"In the following chapter (VI), which describes the various processes which may be resorted to for the recovery of arrears of land-revenue, the

alterations which deserve mention are only three. By section 78 the period during which a defaulter may be imprisoned has been reduced from one year to one month. By the following section the exemptions from attachment and sale of moveable property specified in section 266 of the Civil Procedure Code are extended, in the case of a revenue-defaulter, to seed-grain, and to so much of the produce of his land as may be necessary for the support of himself and his family and the maintenance of his cattle until the harvest next following on the execution of the process. And with a view to render this chapter complete in itself, the procedure for the sale of a defaulter's land, instead of being described, as in the present Act, by reference to the sections of the Civil Procedure Code relating to the sale of immoveable property, has been set out in full by incorporating those sections, with some necessary modifications, in this part of the Bill.

"Chapter VII supplements the provisions of the preceding collection chapter by providing for the recovery, as arrears of land-revenue, of a number of other Government demands. This is probably one of the most useful chapters of the Bill, but there is nothing in it that that seems to call for special notice at my hands.

"I pass on to Chapter VIII, the provisions of which are altogether new, but of which the general policy is believed to be entirely in accordance with the views of the Government of India as set forth in a circular on the formation of fuel and fodder reserves issued in March, 1883. The chapter has been so framed as to secure in estates, where the conditions are suitable, the management of a portion of their waste-lands for the production of wood and grass. The areas to be so treated are not to exceed one-fifth of the waste in each estate, and power is taken to make rules for their management on behalf of the owners. All rules and orders under this chapter must be made and issued by the Local Government, and it is further provided that, before any order is issued declaring that an area is reserved, objections shall be invited and considered. There can be little doubt that a power of this kind is very much wanted in the interests of both the State and the people, and from my own experience I think I may confidently state that in many parts of the Punjab the intervention of the Government, to bring about the results aimed at by this chapter, will be welcomed by the people."

"Chapter IX, on Survey and Boundaries, contains the usual provisions for facilitating the survey of land for revenue-purposes. Similar provisions are to be found in most of the land-revenue laws of other provinces, and there

is nothing in this part of the Bill which seems to call for comment or explanation.

"The last chapter (X) deals with matters for which provision could not conveniently be made in other parts of the Bill. Of these a few are of sufficient importance to require special notice. The first is contained in sections 126 and 127, which provide for the execution by Revenue-officers of decrees and orders of Civil and Criminal Courts. So long as civil, criminal and revenue jurisdiction was vested in the same officers, the subordinate revenue-establishments, from the Tahsildár downwards, were at the disposal of the Courts for the execution of processes relating to land and its produce; but civil and revenue jurisdiction now vests in different officers; hence the officers presiding over Civil Courts have no longer at their command any agency by which orders of this kind can be carried out. The object of these sections is to supply the deficiency by continuing the practice which existed before the passing of the Courts Act of 1884. Next comes the provision made by section 133 for meeting the uncertainties of jurisdiction which frequently arise in cases relating to alluvial lands on the banks of the larger rivers, where those rivers form the boundary between districts. The want of a provision of this kind has been much felt, especially on the rivers where the *hadd-i-sikandari*, or deep-stream rule, prevails. And the last I shall notice is contained in section 134, which declares that all records and papers which a village-officer is required by law to prepare or keep shall be the property of Government, and makes provision for their production and proof. The chief object of this section is to avoid the too frequent summoning of patwáris to Court.

"I have now, my Lord, accomplished my task, and trust that I have sufficiently explained the more important additions and amendments which this Bill proposes to make in the land-revenue law of this Province, and that the measure will meet with the general approval of this Council and of the Select Committee for whose consideration it has been referred."

The Hon'ble MR. ILBERT said:—"I believe that this Bill will prove to be an extremely useful measure, and I say so with the greater readiness because my personal share in its preparation has been very slight. The credit for it is mainly due to Colonel Davies and Colonel Wace, the Financial Commissioners of the Punjab, who have supplied the substantive proposals on which it is based, and to Mr. Harvey James, the Officiating Secretary in the Legislative Department, who has, after several protracted conferences with the Punjab officials, completely revised and re-cast the draft submitted by the Punjab Government,

and has reduced it to a series of clearly expressed and well-arranged enactments.

"On comparing the Bill now before the Council with the Act of 1871, which it is intended to supersede, I am struck by two chief differences, one of addition and the other of omission. In 1871 the revenue law of the Punjab was to be found in a mass of executive instructions, based on the numerous Acts and Regulations then in force in the North-Western Provinces, of which the most important was the well known Regulation VII of 1822. It was extremely difficult to ascertain what was the law in force in the North-Western Provinces, and still more difficult to determine how much of that law had been imported into the Punjab. The task which my eminent predecessor Sir James Stephen undertook was to explore this mass of instructions, to pick out from it such provisions as could properly and conveniently be given the force of law, to express them in legislative language and to embody them in an Act. He thus produced a law which in point of expression and arrangement was an enormous advance on anything then existing either in the Punjab or in the North-Western Provinces. But this first edition of directly enacted Punjab revenue law was necessarily incomplete. The framers of the Act wisely selected for enactment only the more important provisions of the law, and left a great quantity of subsidiary matter to be regulated by rules made under the Act. Since 1871 much has been done to make the revenue law for those parts of British India which have borrowed their principle of revenue settlement and administration from the North-Western Provinces more complete in substance, more satisfactory in form and more generally intelligible. In 1873 a comprehensive Revenue Act of 259 sections was passed for the North-Western Provinces, and it repealed, as I find from the schedule to the Act, no less than 53 Regulations and 8 Acts previously in force on the same subject. Eight years afterwards—in 1881—an equally comprehensive Revenue Act was passed for the Central Provinces. During the same period a great number of rules have been framed under the Punjab Act, and the experience of 15 years has shown which of them work well in practice and which of them are of sufficient importance to be embodied in an Act of the legislature. And last, but not least, Mr. Baden-Powell's admirable *Manual of Indian Land-revenue Systems* has done much towards making the revenue law and practice of different parts of India not merely intelligible to experts but even interesting to the general reader.

"Under these circumstances the task imposed on the draftsman of a revenue law is wholly different from what it was fifteen years ago, but it is none the less of a very laborious character. In the present case it has consisted, first,

of giving legislative form to a selected number of rules framed under the existing Act, and secondly, of comparing the law proposed for the Punjab with the law now in force in the North-Western Provinces and the Central Provinces, with the view of making the law for the three Provinces uniform, so far as their differing circumstances will permit. Hints for improvement of the law have also been derived from the study of the Acts for other parts of British India, such as Bengal and Bombay, where a different revenue-system is in force. The intimate acquaintance of my friend Mr. Harvey James with the revenue law of the North-Western Provinces has made him eminently qualified to perform this latter task, and a glance at the marginal references on the Bill will show how carefully and exhaustively it has been performed. The result of these two processes has been to increase the bulk of the measure, which has been expanded from an Act of 67 sections to a Bill of 140 sections.

"But notwithstanding this growth in the size of the law, some important provisions of the Act of 1871 find no place in the Bill. Chapter II of the existing Act is entitled 'Of Settlements,' and describes the various kinds of settlements which may be undertaken—summary settlements, first regular settlements and re-settlements. There is no corresponding chapter in the Bill, and those who study its provisions will find that the phrases 'settlement' and 'Settlement-officer' have been carefully expunged. I gather from what has fallen from my hon'ble colleague in charge of the Bill, and from some paragraphs in the Statement of Objects and Reasons, that this omission implies something more than an alteration of language, and is intended to give expression to an important and salutary policy. It means, as I understand, that the great work of settling the revenue of the country and compiling a Domesday record of the several rights and interests in the land, if not yet completed for the Punjab, is within a measurable distance of completion; that when the settlement of the districts now remaining to be settled has been finished, the work will, it is hoped, have been substantially done once for all; that within a not far distant future revisions of settlement on the old system will, save under exceptional circumstances, have become things of the past; and that, instead of the tedious, harassing and expensive settlement-operations which have heretofore periodically taken place, an effort will be made to maintain, chiefly through the agency of village-officers, a continuous record of agricultural facts such as will make revision of assessment a comparatively easy and inexpensive task. This is a policy which the Revenue and Agricultural Department of the Government of India have for many years had at heart, and I am glad to see that it has found such significant expression in the Bill now before the Council."

1886.] [*The President; Colonel Davies; Mr. Ilbert; Sir Steuart Bayley.*]

His Excellency THE PRESIDENT said:—"Before putting this Motion, I should like to take the opportunity of expressing, not only on my own behalf but on behalf of all the other members of the Council, our very high appreciation of the exceptionally able manner in which our hon'ble colleague has explained the provisions not only of this Bill but of the previous important measure which he laid before us a meeting or two ago. I am sure that it must be a matter of congratulation to His Honour the Lieutenant-Governor that he should have at his disposal the services of so very capable an officer and colleague."

The Motion was put and agreed to.

The Hon'ble COLONEL DAVIES also moved that the Bill and Statement of Objects and Reasons be published in the *Punjab Government Gazette* in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

INDIAN COMPANIES ACT, 1882, AMENDMENT BILL.

The Hon'ble MR. ILBERT moved that the Bill to amend the Indian Companies Act, 1882, be referred to a Select Committee consisting of the Hon'ble Sir S. Bayley, the Hon'ble Mr. Hunter and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

LOWER BURMA GAOLS DELIVERY BILL.

The Hon'ble SIR S. BAYLEY moved that the Bill to make provision for the more speedy trial of certain accused persons in custody in Lower Burma be taken into consideration. He said:—

"I explained the provisions of this Bill at the last meeting of the Council, and I have only now to say that, since then, we have been in telegraphic communication with the Chief Commissioner of Burma, and that he has replied both for himself and for the Judicial Commissioner, whom he consulted. They have both accepted the Bill in the shape in which we have put it, but have asked that

there should be introduced into it three amendments. These three amendments are, first, that, instead of making the Bill run to the end of March, we should make it run to the end of June next; secondly, that the period of appeal should be further reduced from 30 to 15 days; and, thirdly, that, with regard to cases which have been heard up to a certain point, the presiding officer, on receiving his new powers under the Bill, should be able to take up such cases at that point and should not be obliged to commence the proceedings *de novo*. Hon'ble members will see from the notices which are on this paper in my name that the first and third of these proposals have been accepted by us. The second one—for the further reduction in the period of appeal—did not commend itself to us, and accordingly we do not propose to make any alteration on that point."

The Motion was put and agreed to.

The Hon'ble SIR S. BAYLEY also moved that the following sub-section be inserted after sub-section (*3*) of section 3 of the Bill, namely:—

"(*4*) Proceedings pending before a Magistrate under Chapter XVIII of the Code of Criminal Procedure at the time of the conferment on him of those powers of a Court of Session may be continued by him under Chapter XXI of that Code as if they had been commenced under the latter Chapter:

"Provided that the accused person may demand that any witness who has given evidence before the conferment of the powers be re-summoned and re-heard."

The Motion was put and agreed to.

The Hon'ble SIR S. BAYLEY also moved that sub-section (*4*) of section 3 of the Bill be numbered (*5*).

The Motion was put and agreed to.

The Hon'ble SIR S. BAYLEY also moved that in section 8 of the Bill the words and figures "thirtieth day of June, 1887," be substituted for the words and figures "thirty-first day of March, 1887."

The Motion was put and agreed to.

The Hon'ble SIR S. BAYLEY also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

UPPER BURMA LAWS BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to declare the law in force in Upper Burma. He said:—

"The object of this Bill is to lay the foundation of a system of law for the new province of Upper Burma. The present condition of the law in that Province resembles that which prevailed in the Punjab for several years after its annexation, and which was described by Sir James Stephen when he dealt in this Council with the several measures introduced in 1871 for consolidating and codifying portions of the Punjab law. The civil administration of the country is being conducted under instructions which have been issued by Sir Charles Bernard, and by which civil officers are enjoined, amongst other things, to be guided, as far as possible, by the provisions of the Indian Penal and Procedure Codes, and, in matters relating to succession, inheritance, marriage, caste and religious usages and institutions, to observe the personal law of the parties except in so far as it is modified by local custom, or, in the absence of any such law or custom, to act according to justice, equity and good conscience. It was of course necessary to make immediate arrangements for administering the country, maintaining order and dispensing justice, and it was only by means of such instructions that these arrangements could be made. But the intention was that the instructions should be of a temporary and provisional character, and it is desirable that they should as soon as practicable be superseded by laws more formally enacted and more precisely expressed. The Bill which I am now asking leave to introduce will be the first stage of this process, and will possibly be the only stage that will come before this Council. Upper Burma has been constituted a scheduled district and brought under the operation of the Statute of 1870, which provides for those districts a more summary form of legislation than that conducted through the machinery of the Legislative Council. Consequently, such further laws as are required will take the form either of Regulations framed under the Statute of 1870 or of enactments extended under section 5 of the Scheduled Districts Act. There will be a Civil Procedure Regulation, a Criminal Procedure Regulation, a Revenue Regulation and possibly one or two others; and it may be found desirable hereafter to add to the list of enactments scheduled to the present Bill. I need hardly say that it is not the intention of the Government to force upon the country any artificial, elaborate or unsuitable system of law. No greater body of law will be introduced than is believed to be necessary for the purpose of enabling the officers charged with the administration to understand the limits within which they

can safely exercise their powers, and of assisting the people to understand the general character of the law to which they are to be subject; and in adapting Indian law to Burmese requirements care will be taken to study the real needs and conditions of the country and the customs and usages of the people.

"After this preface I may describe shortly the provisions of the Bill. It begins by defining the Province of Burma as consisting of Upper and Lower Burma—the former being the newly acquired territories, the latter those previously administered by the Chief Commissioner of what has up to the present been known as British Burma. But it adds a power to transfer border tracts from Upper to Lower Burma, and *vice versâ*. The reason for giving this power is that the old boundary was, as may be seen from the map, drawn roughly in a straight line from east to west, disregarding the natural features of the country, and breaking rudely through the old limits of townships and circles; and it would be for the convenience both of the administration and of the people that some of the fragments thus unnaturally severed should be reunited. Then comes a section which declares that in existing enactments references to British Burma must be read as referring to Lower Burma. Then, after a repealing section, to which I will refer hereafter, follows one which enumerates by reference to a schedule the Indian enactments which are to be in force in Upper Burma, and bars the application of other enactments except in pursuance of powers to be hereafter exercised. The passing of these three sections is a necessary preliminary to the legislation contemplated under the Statute of 1870. Regulations under that Statute must be proposed either by a Governor, a Lieutenant-Governor or a Chief Commissioner. But it would be inconvenient to constitute Upper Burma a separate Chief Commissionership, and the effect of placing it immediately under the Chief Commissioner of British Burma as such would be to extend to Upper Burma all the Acts which are expressed to extend to the territories for the time being under the administration of that functionary, and many of which are unsuitable to the conditions of the upper part of the province. At present there is no Chief Commissioner for the province as a whole or for the upper part of the province separately. Sir Charles Bernard is Chief Commissioner for the lower part of the province, and he is, as I understand, Agent for the Governor General without any distinctive appellation in the upper part of the Province. Before a Chief Commissioner for the whole province is appointed we propose to make it quite clear that the appointment will not involve any inconvenient legislative consequences. The schedule of the Indian enactments which are

to be applied to Upper Burma has been prepared by the local authorities, and is based on the schedule of Acts declared to be in force in the Arakan Hill District, but with such differences as the circumstances of Upper Burma seem to require. Power is given by the Bill to withdraw any enactment if it is found to be unnecessary or unsuitable. I ought to add that the schedule consists of two parts—one enumerating the Acts which are to apply to Upper Burma generally, and the other specifying a few Acts the application of which is to be confined to the district of Mandalay.

"The only material modifications which it is proposed to make in the enactments scheduled for application are specified in section 6 of the Bill. They are three in number, and the only one of them to which I need refer is that which extends the number of cases in which whipping may be inflicted as a punishment. The Local Administration considers this extension necessary in the present state of the country, both because of the scarcity of jails, and because the crimes of violence with which justice has mainly to contend can be more effectually and suitably visited by corporal punishment, with or without a short term of imprisonment, than by imprisonment for a lengthened period. The infliction of the punishment is, as in the measure which has just been passed for the disturbed districts of Lower Burma, made subject to the conditions and exemptions laid down by sections 390 to 395 of the Criminal Procedure Code. I have said that all the material modifications proposed to be made in the applied enactments are specified in the Bill; but of course when Acts passed for one part of the country are applied to another, the language employed and machinery indicated will not always precisely fit. To go through each of the scheduled Acts and specify in detail the verbal modifications which must be made in order to adapt it to Upper Burma would be a work of considerable labour and doubtful utility; and I think the necessities of the case will be met by a section which I have borrowed from one of the Orders in Council recently passed by Her Majesty under the Foreign Jurisdiction Acts, and which directs the Courts to construe the enactments applied with such alterations not affecting the substance as may be necessary or proper to adapt them to the matter before the Court.

"I referred previously to the repealing section. It repeals certain enactments relating to frontier posts and transit dues which have been made unnecessary by the abolition of the old frontier.

"The only other provisions of the Bill consist of two confirming sections. The first contains an indemnity in the usual form for acts done by officers of Government or persons acting under their authority since

the date at which British troops entered Upper Burma; and the other declares that Sir Charles Bernard's instructions to local officers are to have the force of law until they are superseded by more regular enactments.

"The Bill will be sent to Sir Charles Bernard and his officers, and will not be passed until we have received their criticisms upon it."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also introduced the Bill.

The Council adjourned to Wednesday, the 28th July, 1886.

S. HARVEY JAMES,
Offg. Secretary to the Govt. of India,
Legislative Department.

SIMLA;
The 16th July, 1886.

Govt. C B. Press, Simla.—No. 237 L. D.—19-7-86.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Viceregal Lodge, Simla, on Wednesday, the 11th August, 1886.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of the Punjab, LL.D., K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E., V.C.

The Hon'ble C. P. Ilbert, C.S.I., C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble Sir T. C. Hope, K.C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble Major-General G. T. Chesney, R.E., C.S.I., C.I.E.

The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

The Hon'ble Colonel W. G. Davies, C.S.I.

UPPER BURMA LAWS BILL.

The Hon'ble MR. ILBERT moved that the Bill to declare the law in force in Upper Burma be referred to a Select Committee consisting of the Hon'ble Sir S. Bayley, the Hon'ble Sir A. Colvin and the Mover, with instructions to report within six weeks.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *British Burma Gazette* in English and in such other languages as the Local Administration thinks fit.

The Motion was put and agreed to.

SUITS VALUATION BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto. He said:—

"This is a little Bill of no great importance, and its main object is to provide means for determining the value of land where it is necessary to ascertain that value for the purposes of jurisdiction.

"The institution-fee payable under the Court-fees Act in suits for the possession of land is computed according to the value of the land, and in order to facilitate this computation the Act lays down certain rules of a somewhat arbitrary character, under which the value of the land is declared to be a particular multiple of the revenue charged or chargeable upon it. Under the various Civil Courts Acts the jurisdiction of the inferior Courts is usually limited by reference to the value of the subject-matter of the suit. One of these Acts—the Madras Civil Courts Act of 1873—directs that, where the subject-matter of a suit is land, its value shall, for the purposes of jurisdiction, be fixed in the manner provided by the Court-fees Act for the purpose of determining the institution-fee. The other Civil Courts Acts do not contain any similar direction, but it appears to be a very common practice in all the provinces to treat the value of land for court-fee purposes as being also its value for jurisdictional purposes. The practice is not strictly warranted by law, and is opposed to some rulings of the Bombay High Court, but there is a great deal to be said in favour of it on the score of convenience.

"However, under the rules laid down in the Court-fees Act, land is, in many parts of the country, including the Madras Presidency, assessed at something very much below its net market-value. This does not much matter for the purposes of court-fees, because the Government has not the slightest intention or desire to increase the amount of those fees; on the contrary, it would reduce them if the financial situation permitted. But the Madras Government tells us that the effect of applying the court-fees rules for the purpose of determining jurisdiction is to bring within the jurisdiction of some of the inferior Courts land-suits of a class which those Courts were not intended, and indeed are not qualified, to deal with; and accordingly that Government desires to substitute some other rules which would bring out a valuation more in accordance with the facts. But unfortunately we are not in a position to touch the Court-fees Act at present, and we do not desire to interfere with the practice which is observed in provinces other than Madras, unless and until it is shown to produce inconvenient results. Under these circumstances we propose to meet the wishes of the Madras Government as far as we can by authorising Local Governments, after consulting their High Courts, and with the previous sanction of the Government of India, to frame rules for determining the value of land for jurisdictional purposes. If the Madras Government thinks fit to frame such rules, the rules will, when they come into force, supersede the provisions of the Madras Civil Courts Act to which I have referred. Whether other Local Governments will consider it worth while to frame such rules on the subject I do not

know, but, if they do, the rules framed by them may, whenever the time comes for amending the Court-fees Act, be of material assistance in helping the Government of India to lay down principles of computation which will bring out results more in accordance with the facts than those embodied in the old Act. I repeat, however, that there is no intention to do anything which will directly or indirectly raise the amount of institution-fees payable in suits relating to land.

"This is the main object of the Bill. The Bill contains one or two other minor provisions to which it is not necessary for me to refer at the present stage."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also introduced the Bill.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India* in English and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

INDIAN EVIDENCE ACT, 1872, AMENDMENT BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to amend the Indian Evidence Act, 1872. He said:—

"The object of this Bill is to supply what I cannot but think was merely an accidental omission in dealing with the Act of 1872. Section 125 of that Act is as follows:—

'No Magistrate or Police-officer shall be compelled to say whence he got any information as to the commission of any offence.'

"This provision of the Indian law follows that of the English law, but the English law goes somewhat further by giving to Revenue-officers the same protection as is here given to Magistrates and Police-officers. In England not only is it the case that witnesses may not be compelled to disclose, but they are not even permitted to be asked, the names of those from whom they received information as to frauds on the revenue. The law is perfectly clear on this point. For instance, I will read a passage from Bell's well-known *Laws of Excise*, which states the law on the subject as follows:—

'It is a rule of evidence applicable to criminal cases, and the same rule has always been held to apply to penal informations at the suit of the revenue, that a witness is

not permitted to disclose privileged communications brought to his knowledge for the furtherance of justice. "This is not the privilege of the witness, but may be justly called a public privilege, and is observed on a principle of public policy and from regard to public interests" (1 *Phil. Ev.* 272). Hence "those questions which tend to the discovery of the channels by which the disclosure was made to the officers of justice are not permitted to be asked" (*Rex* v. *Hardy*, 24 Howell's S. T. 753—Eyre, L. C. J.). "If the name of the informer were to be disclosed, no man would make a discovery, and public justice would be defeated" (*Id.*, p. 814—Buller, J.). In the case of *Attorney-General* v. *Bryant* it was held that a witness for the Crown could not be asked "Did you give the information?" (15 M. & W. 169).'

"I have not been able to ascertain from the records of the Legislative Department why the English law with respect to the disclosure by Revenue-officers of the source of information as to the commission of offences against the revenue was not incorporated in the Indian Evidence Act of 1872. It is possible that some reason may be suggested, but until a reason is forthcoming I cannot help thinking that the omission must have been purely accidental. The Government is given to understand that the omission has caused serious inconvenience, and is even said to be seriously impairing the efficiency of the Excise and Salt Departments of the Bombay Presidency. Accordingly, we propose to amend section 125 of the Indian Evidence Act of 1872 by the inclusion of Revenue-officers, and thus to assimilate the Indian to the English law upon this point."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also introduced the Bill.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India* in English and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 18th August, 1886.

S. HARVEY JAMES,
Offg. Secretary to the Govt. of India,
Legislative Department.

SIMLA;
The 13th August, 1886.

Note.—The Meeting fixed for the 28th July, 1886, was subsequently postponed to the 11th August, 1886.

Govt. C B. Press, Simla.—No. 317 L. D.—13-8-86.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Viceregal Lodge, Simla, on Wednesday, the 18th August, 1886.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.
His Honour the Lieutenant-Governor of the Punjab, LL.D., K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E., V.C.
The Hon'ble C. P. Ilbert, C.S.I., C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble Sir T. C. Hope, K.C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble Major-General G. T. Chesney, R.E., C.S.I., C.I.E.
The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.
The Hon'ble Colonel W. G. Davies, C.S.I.

SUITS VALUATION BILL.

The Hon'ble MR. ILBERT moved that the Bill to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto be referred to a Select Committee consisting of the Hon'ble Sir A. Colvin and the Mover. He explained that he proposed to nominate merely a skeleton Committee on this and the following Bill, because it was not probable that the Committees would begin their labours during his term of office and it might be more convenient that their constitution should be settled by his successor.

The Motion was put and agreed to.

INDIAN EVIDENCE ACT, 1872, AMENDMENT BILL.

The Hon'ble MR. ILBERT also moved that the Bill to amend the Indian Evidence Act, 1872, be referred to a Select Committee consisting of the Hon'ble Sir S. Bayley and the Mover.

The Motion was put and agreed to.

DEKKHAN AGRICULTURISTS' RELIEF BILL.

The Hon'ble SIR THEODORE HOPE moved for leave to introduce a Bill to amend the Dekkhan Agriculturists' Relief Acts, 1879 to 1882. He said:—

"About four years have elapsed, I am happy to say, since it was last my duty to come before this Council on the subject of the Dekkhan Agriculturists' Relief Act. During this period the Act has undergone a twofold ordeal. In the first place, its whole working was subjected to a special inquiry made by an officer appointed by the Bombay Government to investigate how far its provisions were really beneficial, or the reverse. This inquiry was analysed and scrutinised by a number of competent officers and eventually referred to the Secretary of State, and the discussions which took place have resulted in certain conclusions of which we now have the benefit. But, besides this ordeal of a special inquiry, the Act has likewise passed through four years of practical working, and during that time we have received four annual reports by two very able officers—Dr. Pollen and the Hon'ble Mahadeo Govind Ranade—who filled the office of Special Judge. The result of this ordeal may be stated in a very few words. In the first place, the general working of the Act has been found, on the whole, to be extremely satisfactory; in the second place, the general phraseology of the Act, about which considerable differences at first arose, has now become, or been made, sufficiently intelligible to be worked by the Courts without conflicting decisions, and without either injustice or the indefinite postponement of the final decision on cases; and, thirdly, there are still a few improvements in the law apparent which it will be desirable to effect on the present occasion. It is in order therefore to take a certain amount of action under these three heads that I have come before the Council today.

"In consequence of the generally satisfactory working of the Act, which is, I believe, now established with scarcely any question from any quarter, the Government of Bombay propose that power should be taken to extend either the whole Act, or certain portions of it, to other parts of the Bombay Presidency. As to what parts such extension will be desirable for, it is not for me at present to say; that is a matter for the Executive Local Government, but I believe I may indicate that no large or sweeping extension is contemplated at present, and that only such tracts will gradually be brought under the Act as are found to be more or less afflicted with the same evils and difficulties as led to the original legislation in the case of the four Dekkhan Collectorates. Moreover, I think I may add that it is very probable that in some instances the whole Act would not be extended, but only certain portions,—I cannot specify exactly which,—but portions such

as those which require the history of transactions with agriculturist-debtors to be investigated, or those which relate to the mode of taking accounts, which have been found to be of enormous value in any suit, would be the first to be applied.

"In regard again to the phraseology, there is only one small improvement contemplated—that is, a better definition of the word 'lease'.

"As to the improvements which are still found desirable in the Act, I need not detain the Council long. One of them is to make the examination of the defendant ordinarily compulsory in all suits under Chapter III, just as it now is under Chapter II, and, consequently, to provide against *ex parte* decrees in such suits, which everybody admits to be an evil.

"Again, it is found desirable that standing crops should not, for the purposes of this Act, be treated as immoveable property, and consequently be exempted from being taken in execution of a decree. They are usually the legitimate security for an advance for the purposes of cultivation, and it seems only fair that the persons who make the advances should look to the standing crops for their recoupment if necessary.

"Moreover, it is found desirable, as a matter of administrative convenience, to relieve the Village-Registrars of the duty of registering such documents as are liable to registration under the ordinary Registration Act. It is proposed to confer it on what are called Taluka-Registrars, who will, however, follow the peculiar procedure provided under the Dekkhan Agriculturists' Relief Act when the executants are agriculturists. Again, there is a small alteration desired in section 72 of the Act with regard to the time of limitation.

"The only other alteration which I ought to mention, as being of importance, is with reference to the powers of Conciliators to require the attendance of persons against whom applications are made under section 39 of the Act. This proposal to give Conciliators the power of requiring attendance was negatived by this Council in 1882, contrary to the advice of the Local Government and of a considerable number of other authorities. At the same time the question then certainly was one which was reasonably open to doubt and difference of opinion, and it is just as well that we should have had four more years in order to obtain more conclusive data and opinions upon it. The result of this lapse of time is that the Bombay Government are still of opinion that this power should be given, and that it appears to us now desirable that the legislature should no longer hesitate to confer it. With regard to the details of the subject

I will reserve my remarks till the next occasion when the Bill comes before the Council."

The Motion was put and agreed to.

The Hon'ble SIR THEODORE HOPE also introduced the Bill.

The Hon'ble SIR THEODORE HOPE also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India* in English and in the *Bombay Government Gazette* in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 25th August, 1886.

S. HARVEY JAMES,
Offg. Secretary to the Govt. of India,
Legislative Department.

SIMLA;
The 20th August, 1886.

Govt. C. B. Press, Simla.—No. 336 L. D.—20-8-86.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Viceregal Lodge, Simla, on Wednesday, the 25th August, 1886.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of the Punjab, LL.D., K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E., V.C.

The Hon'ble C. P. Ilbert, C.S.I., C.I.E.

The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.

The Hon'ble Sir T. C. Hope, K.C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble Major-General G. T. Chesney, R.E., C.S.I., C.I.E.

The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

The Hon'ble Colonel W. G. Davies, C.S.I.

NATIVE PASSENGER SHIPS BILL.

The Hon'ble SIR A. COLVIN moved for leave to introduce a Bill to consolidate and amend the law relating to Native Passenger Ships. He said:—

"Experience has shown that the law of 1876, in respect of Native passenger ships, which was amended by the respective enactments of 1883 and 1884, requires modification in certain points with a view to the greater security and comfort of the passengers, and to the protection of the interests of those concerned in Native passenger traffic. After consulting the different Local Governments, the six amendments which are contained in the Statement of Objects and Reasons have been resolved upon with the view of meeting the above points. It is unnecessary that I should enter into further explanation here in regard to the amendments proposed in the modifications of the present law set forward in the Bill which I ask to leave to introduce, as they are stated with sufficient fulness in the Statement of Objects and Reasons."

The Motion was put and agreed to.

The Hon'ble SIR A. COLVIN also introduced the Bill.

The Hon'ble SIR A. COLVIN also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India* in English and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

DEKKHAN AGRICULTURISTS' RELIEF BILL.

The Hon'ble SIR THEODORE HOPE moved that the Bill to amend the Dekkhan Agriculturists' Relief Acts, 1879 to 1882, be referred to a Select Committee consisting of the Hon'ble Mr. Ilbert, the Hon'ble Sir S. Bayley, the Hon'ble MR. Quinton and the Mover, with instructions to report within two months. He said :—

"In support of a Motion of this kind it is usual to give a somewhat more detailed sketch of the provisions which a Bill contains than that which is afforded on the Motion for leave to introduce it. I do not think, however, that it is necessary for me to trouble the Council with what, as regards the majority of the amendments which this Bill proposes to effect, would be hardly more than a repetition of my remarks on the last occasion. But there is one of those amendments which I then indicated as being of importance, and on which I shall be expected to give a little further explanation; that is, the section relating to conciliation, by which it is proposed to invest the Conciliators with power to require the attendance of either of the parties to the conciliation. At present the Conciliator possesses the power of requiring the attendance of the applicant, but only of inviting that of the defendant.

"In the first place, I may take the opportunity of pointing out the very important position which this system of conciliation has now obtained in the four Dekkhan collectorates to which the Act is applied. It was in force last year in 25 out of 37 talukas in these four collectorates, the remaining talukas being worked under somewhat different arrangements; and in those 25 talukas there were 237 Conciliators. The importance of their work may be judged from the fact that during the past year there were 40,641 applications for conciliation, and that those applications related to an amount of no less than 51½ lakhs of rupees. During the year, again, the number of cases disposed of, including those in arrear, was 42,880. Of these cases, both the parties appeared in about 12,000, and in about 31,000 one or other of the parties was absent; that is to say, there were

about 28 per cent. of full appearances, and about 72 per cent. of absences of one or other of the parties, of which a small proportion only was due to withdrawals or compromises. Now, it is obvious that, where one or other of the parties does not make his appearance before the Conciliator, the conciliation cannot be said to have failed, but has never had the opportunity of being tried at all, and the object of the provision of the law is defeated, except in so far as the granting of certificates is concerned. Therefore, what we must look to, in examining this conciliation system, is the result in cases in which both parties made their appearance before the Conciliator. Now, we find that, during the past year the proportion of cases in which the parties came to terms (which means that they settled their disputes without it being necessary to go to a Civil Court) was no less than 78 per cent.; or, to put it in another form, more than 3 out of 4 of the cases, or nearly 4 out of 5, were settled in this simple and inexpensive way, instead of being subjected to the costly and dilatory machinery of the Civil Courts. This percentage of 78, moreover, is the more satisfactory, for we find that the proportion has been growing every year since the Act was introduced. In the year 1880 the percentage of such cases was 52; in the following year it was 44; in the third year it was 58; in the fourth 64; in the fifth year 73; and now we have it at 78.

"Turning next to the nature of these agreements, which is not an unimportant point,—because when the Act was introduced, and its probable effects could only be judged by theory instead of by experience, it was said that the influence of the saukár, and of his social relations, and so on, would be so great that the unfortunate raiyats when brought before the Conciliator would be less able to stand against him than when in a Civil Court,—we find that in the past year 9,361 cases were decided, and that, out of these, 8,990 agreements were filed in the Civil Court, the difference in figures being merely owing to pending cases. Out of these 8,990 agreements, 6,704 related to money-claims. These money-claims were of the value of 7¼ lakhs of rupees, and the result of the conciliation process was that these 7¼ lakhs of rupees were reduced by 33 per cent., or ⅓rd; that is to say, that the matter was settled for about ⅔rds of what the saukár was demanding from the raiyat. The mortgage-agreements, again, numbered 1,790, and were valued at 3½ lakhs of rupees, the amount of interest claimed being Rs. 1,86,581. In these, we find that the results of the conciliation were very nearly in the same proportion as in the money-claims, that is to say, the reduction amounted to 32 per cent. of the claims. Turning now to the third class of agreements, namely, those for the redemption of mortgaged land, the number was 496, and the land was valued

at Rs. 1,10,000. The value was not open to much dispute,—the difference on settlement being only about Rs. 1,000 or so,—but in 125 cases, where the land was in the possession of the creditor, his term was limited, that is to say, an arrangement was made by which he would have to give up the possession of the land after a definite period; while in the remaining 314 the lands were restored at once to the original mortgagor, subject to an arrangement that he should pay a series of fixed instalments till the debt was liquidated. These are the actual facts of the past year. Now, with regard to the quality of the Conciliators' decisions, which might seem open to question, it is very remarkable that, out of the whole of these 8,990 cases, only 77 were objected to within the period for which the law provides that objections to the arrangement may be filed in the Civil Court by either party. Out of all these 77, the objections were allowed in only 37 instances. Besides this the Court, of its own motion, under the powers which it has under another section of the Act, disallowed 38 of the agreements, as being either contrary to law, or improper for some other obvious reason. So we have the fact that, out of all these 8,990 agreements, only 75 were upset for one reason or another, that is to say, considerably less than one per cent.

"Passing now from the circumstances in which the conciliation has had a satisfactory effect to the opposite, we find that the cases in which conciliation could not come into play owing to the non-appearance of the parties without apparent cause are on an average about 64 per cent. This percentage has not varied very much since the Act was introduced. I find that in some years the number of applicants who did not attend was larger than in other years, and so also as regards the defendants; but practically about 64 per cent., that is to say, about ⅔rds, of the cases which might have come before the Conciliators, and which presumably, if they had so come, might probably have been settled satisfactorily. in the proportion which I have been citing, absolutely lie over, and become the subject at any rate of expensive and tedious litigation. Now, it is in order to remedy this particular difficulty, of the non-appearance of one party or the other, that the clause in our present Bill has been framed.

"As regards the general working of this conciliation system, I may quote a few words from the last year's report by the Hon'ble Mahadeo Govind Ranade, the Special Judge in charge of the four Dekkhan districts.

"He says that the figures shew, '*first*, that although there has been a decrease of nearly 20 per cent. in the total number of applications, these applications were still nearly twice as many as the number of suits instituted in the

subordinate Courts; *second*, that the value of the claims involved in these applications was nearly five times as large as the value of the claims brought in the Civil Courts; *third*, that the number of applications in which agreements were made, or in which the claims were otherwise compromised, did not fall much short of the number of suits which were disposed of really and finally; *fourth*, that the value of the claims so settled exceeded the total value of the claims disposed of by the Civil Courts," and again, "that the percentage of abatements under all heads, namely, (w, y and z), secured by Conciliators was not very much lower than the corresponding results in suits disposed of in Civil Courts." Moreover, I find that, out of the 25 Sub-Judges in the four districts, 22 are entirely in favour of the conciliation system. The 3 others make objections to certain portions of it, which are very ably reviewed and met by Mr. Ranade, but which I need not trouble the Council by recapitulating. Thus, I would submit that the system is a very good one; that it has proved of enormous benefit as far as it has been allowed to act; that it has already, even in this imperfect state, taken the place of very much larger, more expensive and cumbrous machinery; and that it ought to be allowed the fullest scope. In order to secure this attendance of parties, I may state that various expedients have been suggested short of allowing a power of summons and warrant; but, after full deliberation, it has been considered best to adopt the simple means already in vogue in the ordinary Courts of the country, that is to say, that the summons should issue, and that in the case of non-compliance with the summons attendance should be required by warrant. In case there should be any feeling that this requiring of attendance by warrant is a somewhat harsh and drastic method, I would recall to mind that exactly similar objections were made in 1879 in this Council to the clause of the Act which provides against suits being decided *ex parte*, by giving the Courts power to absolutely require the presence of the defendant. At that time very strong objection was offered to this clause, and it was finally discussed and adopted on an amendment in this Council. But now we find that during the last six years not the slightest evil consequences have arisen from it. I venture to believe now in this case, as I thought then, that, when once it is understood that an order has to be obeyed, nobody thinks of disputing it. I do not recollect that in the whole course of my experience as a Magistrate I ever had to issue a warrant to obtain the attendance of a witness, and I have very little doubt that this will be the result with regard to the attendance of these parties, and that the mere fact of the law requiring that they shall attend will be quite sufficient to ensure their doing so without trouble.

"With these remarks I commend my Motion to the Council."

The Hon'ble MR. ILBERT said:—"The Act now under amendment was the subject of a controversy which raged very fiercely a short time before my arrival in this country, and of which the embers were still smouldering when the second amending Act was passed four years ago. The judgment of most impartial critics at the present time will probably be that the Act embodies sound principles and contains some useful provisions combined with others which were not well adapted to their purpose and have remained inoperative. I think that the Local Government is quite justified by its experience of the working of the Act in asking for powers to extend to other districts those provisions which have satisfactorily stood the ordeal of the last six years. With reference to the particular provision which was rejected by a narrow majority in 1882,—the provision which gives Conciliators power to require the attendance of the parties,—I thought then that neither the evidence nor the arguments brought forward in support of the proposal to give this power were convincing, and accordingly I gave my vote on the side of caution. As, however, it appears that the local authorities, in the light of the full discussion which took place in this Council four years ago, and of the subsequent experience gained during the last four years, are of opinion that the conferment of such a power is necessary for the satisfactory working of the Act, I am quite content to defer to their judgment on that point."

The Motion was put and agreed to.

JHÁNSÍ AND MORAR BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to annex the Town and Fort of Jhánsí and certain adjacent territory to the Jhánsí District, and for certain other purposes. He said:—

"This Bill is drawn in three Parts. The object of Part I is to incorporate in the Jhánsí district the town and fort of Jhánsí, which were lately ceded by the Mahárájá Scindia to the British Government in exchange for the cantonment of Morar. The town and fort have already been declared by proclamation under the Statute 28 & 29 Vic., c. 17, section 4, to be subject to the Lieutenant-Governorship of the North-Western Provinces, but legislation is required for the annexation of the town and fort to the Jhánsí district, and for the assimilation of the law in force therein to that in force in the district. The provisions necessary to effect these objects are contained in sections 2 and 3 of the Bill; while section 4 makes it clear that the ceded territory will be part of the scheduled

district known as the Jhánsí Division; and section 5, which is taken from the corresponding provision in the Upper Burma Laws Bill now before the Legislative Council, validates all acts done since the date of the cession and before the commencement of the Act. As negotiations are at present pending for the exchange of certain lands in the neighbourhood of Jhánsí, the provisions of sections 2, 3 and 4 of the Bill are made prospective, so as to cover the lands which may be ceded.

"The object of Part II is to give effect to certain decrees and orders of the Gwalior Courts which, by reason of cession of territory, have ceased to be enforceable in those Courts.

"The object of Part III is to afford relief to certain traders and others formerly carrying on business within the cantonment of Morar who had money-claims enforceable in the local Courts at the time of the cession of the cantonment to the Mahárájá. As the British Courts in the cantonment have necessarily been abolished, these persons have now no means of recovering the amounts due to them at Morar, whilst to follow their debtors to the various places to which they have migrated, and proceed against them in the Civil Courts there, would, in many cases, put the creditors to greater expense than the amount of the debts due to them. It is proposed, therefore, by section 7 of the Bill that persons who may have been entitled to file suits of certain classes, or applications for the execution of decrees in suits of those classes, in a Morar Civil Court at the date of the cession of the cantonment, may file the suits and applications in the Civil Courts at Jhánsí or Agra, or at any other place appointed by the Governor General in Council in this behalf, and that the Courts having jurisdiction at those places shall dispose of the suits and applications. In order to save debts which might otherwise have become time-barred, the same section declares that in computing the period of limitation for the suits and applications, the time which has elapsed between the date of the cession of the cantonment and the commencement of the Act shall be excluded."

The Motion was put and greed to.

The Hon'ble MR. ILBERT also introduced the Bill.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India* in English and in the *North-*

Western Provinces and Oudh Government Gazette in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 1st September, 1886.

S. HARVEY JAMES,
Offg. Secretary to the Govt. of India,
Legislative Department.

SIMLA;
The 2nd September, 1886.

Govt. C. B. Press, Simla.—No. 375 L. D.—2-9-86.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Viceregal Lodge, Simla, on Wednesday, the 1st September, 1886.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.
His Honour the Lieutenant-Governor of the Punjab, LL.D., K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E., V.C.
The Hon'ble C. P. Ilbert, C.S.I., C.I.E.
The Hon'ble Sir S. C. Bayley, K.C.S.I., C.I.E.
The Hon'ble Sir T. C. Hope, K.C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
Major-General the Hon'ble G. T. Chesney, R.E., C.S.I., C.I.E.
Colonel the Hon'ble W. G. Davies, C.S.I.

NATIVE PASSENGER SHIPS BILL.

The Hon'ble SIR A. COLVIN moved that the Bill to consolidate and amend the law relating to Native Passenger Ships be referred to a Select Committee consisting of the Hon'ble Mr. Ilbert, the Hon'ble Sir S. Bayley and the Mover.

The Motion was put and agreed to.

CIVIL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble MR. ILBERT moved for leave to introduce a Bill to amend the Code of Civil Procedure and the Indian Limitation Act, 1877. He said :—

"The object of this Bill is to make sundry minor amendments in the Code of Civil Procedure. It is not, and does not profess to be, based on any general or exhaustive revision of the Code; and I may take this opportunity of explaining why I have not considered it necessary or desirable to undertake any such revision during my term of office. The history of the successive editions of the Code is as follows. The original Code was passed in 1859. It was revised by

Mr. Harington about the year 1865, but his labours did not produce any immediate legislative result. The work of revision was taken up again during Sir A. Hobhouse's tenure of office, was then carried out in a very complete manner, and resulted in the enactment of the Code of 1877. But notwithstanding the labour which had been devoted to the preparation of this edition, further amendments were soon found necessary, and in 1879 the Council passed an amending Act of more than 100 sections. In the early part of 1882 Mr. Whitley Stokes found himself in charge of another amending Bill. The amendments then proposed were few in number and trifling in importance, but at the very last stage of the Bill it was suddenly decided to take the opportunity of repealing the Acts of 1877 and 1879 and re-enacting them with the further amendments of 1882. I have often doubted the wisdom of this decision, and have thought that the convenience of the profession and the public might have been equally well consulted, and an illusory appearance of completeness and finality might have been avoided, if the Legislative Department had been merely authorized to issue a reprint of the 1877 Code and to incorporate in it the alterations made by subsequent amending Acts. However, the result was that in the year 1882 the Indian public was presented with brand-new editions of both the Procedure Codes. Suggestions have from time to time been made to me that the Civil Procedure Code is still very imperfect, and stands much in need of a further general revision; but, although I fully appreciate the importance of such periodical revisions, the Council will probably agree with me in thinking that a piece of work of this kind, if attempted, should be done thoroughly. And, after consulting privately several of my friends on the Bench and at the Bar, I came to the conclusion that the Code was on the whole working as well as the machinery at our disposal warranted us in expecting, and that, though there might be room for improvement here and there, I should not be justified in advising the Government to undertake so laborious a task as a general revision of the system. It has been remarked more than once in this Council that the whole legislative and administrative machinery of India had for a lengthened period been at work on the Bill which became law in 1877, and one should not with a light heart invite our overworked officials to a repetition of such a task.

"It has, however, now become necessary to make a few amendments in the Code for the purpose of supplementing or giving effect to measures actually pending before the Council, such as the Guardians and Wards Bill and the Debtors Bill; and I have taken the opportunity of proposing sundry other amendments to the need for which the attention of my Department has been from time to time directed, the expediency of which, as far as I can judge,

is not likely to be seriously disputed, and the enactment of which makes no violent change in the existing system of procedure.

"In touching on the provisions of the Bill I will not adhere strictly to the numerical order of the sections, but will deal first with those proposals which arise out of pending legislation.

"In the first place, there is a group of sections connected more or less with the Bill to amend the law relating to imprisonment for debt.

"Of all the legislative measures which I shall be compelled to leave unfinished there is none that I shall leave with more regret than that Bill, and I sincerely hope that my learned successor will see his way to passing it into law at an early date after his accession to office. But it is proposed to give that Bill in the first instance a limited operation only, and there may be parts of the country where opinion is not yet ripe for its acceptance, but where no objection would be raised to what may be considered to be a less serious alteration of the law. For instance, I pointed out as one of the most glaring defects of the existing law that it vests in the creditor and not in the Court the power of deciding whether a debtor shall be sent to prison or not. I presume that no one can seriously object to the Court being vested with discretion on the question whether the remedies available against the debtor's property should be exhausted before resort is had to the remedy against his person; and accordingly I propose to qualify section 245 of the Code by authorising the Court to refuse execution against the debtor's person if it has reason to believe that the decree can be satisfied by execution against his property.

"Again, in my remarks on the same Bill I referred to the unsatisfactory way in which the Insolvency chapter of the Civil Procedure Code appeared to be working in the Mufassal. Having regard to the machinery by which any insolvency law must be worked in the country districts, I think we ought not to be too sanguine about the results to be expected from any mere amendment of the Code; but nevertheless it appears to me that there are one or two obvious defects in Chapter XX of the Code which might without much difficulty and with much advantage be removed.

"Under section 351 of the Code a debtor cannot be declared insolvent, and his property cannot be vested in a receiver, unless the Court is satisfied that the debtor has not committed any one of several specified acts of misconduct. Now the fact that a debtor has been guilty of misconduct is a very good reason for refusing to grant him a discharge from his liabilities, but a very bad reason

for refusing to vest his property in a receiver. The object of vesting an insolvent debtor's property in a receiver is to ensure its speedy and equal distribution among his creditors. And such a provision is needed as much in the case of a reckless or fraudulent as of an innocent debtor.

"The truth is that the way in which this section of the Code is drawn is to be explained on historical grounds. There existed for many years in England two distinct systems of jurisprudence relating to the law of debtor and creditor. There was the bankruptcy law, which sought to take the debtor's property and release his person, and there was the insolvency law, which took the debtor's person but was unable to touch his property except with his own consent and concurrence. In England the insolvency law has been superseded by the bankruptcy law, which is generally admitted to be more in accordance with modern notions. But in India the law, as embodied in the insolvency law applicable to the Presidency-towns and in the Insolvency chapter of the Civil Procedure Code, is still based on the principle of the English Insolvency Acts, though it has been assimilated in some points of detail to the modern bankruptcy law. For instance, the amendment made, I think, in 1879, under which a debtor may apply to be declared insolvent when execution has issued against his property, although his person has not been seized, is quite in accordance with the principles of the bankruptcy law, but is inconsistent with the principles of the insolvency law, under which insolvency is regarded only as a means of escape from prison. Under the old insolvency law, where insolvency was a privilege of the debtor, it was quite intelligible that it should only be granted to the innocent debtor; but under the bankruptcy law, which looks rather to the interest of the creditor, such a restriction is unintelligible and indefensible.

"I propose therefore to assimilate still further the principles of the Insolvency chapter of the Code to those of the Indian Bankruptcy Bill and the modern English bankruptcy law by empowering the Court to vest the insolvent debtor's property in a receiver whether he has been guilty of misconduct or not, by postponing his discharge until a later stage of the proceedings, after the receiver has made his report under section 355, and by empowering the Court, at that stage, as it is empowered under the Bankruptcy Bill, to withhold the debtor's discharge on the ground of misconduct. The series of technical amendments intended to give effect to these proposals will be found in section 16 of the Bill.

"I propose also by another amendment (embodied in the same section) to extend the jurisdiction of certain subordinate Courts in matters of insolvency.

In order to show the petty character which these cases often assume I will read an extract from a note by a gentlemen of long judicial experience in Bengal:—

'The form which an insolvency case usually takes in the Mufassal is as follows. *A* files an application for insolvency, exhibiting in the schedule three or four debts. His assets are usually stated to be some clothes, and perhaps a metal pot or two. One or more creditors oppose, alleging that the applicant has made away with some cows or metal vessels, or that he is entitled to a share of a house or holding which he has not included in the schedule. The evidence given is generally of the vaguest and most ordinary description. If the applicant is declared an insolvent, no creditor ever attempts to prove his debt, and the schedule is made up from admissions of the insolvent.'

"The Council will probably agree with the writer of this note that business of this description might properly be dealt with by Munsifs.

"There are one or two other sections dealing with the law of arrest, but the reasons for these are fully explained in the Statement of Objects and Reasons, and I need not say anything about them now.

"Then there is a section (section 26) making a series of amendments which are intended to supplement the Guardians and Wards Bill. It confers on a guardian, who has been appointed or whose title has been declared by a Civil Court, Court of Wards or other competent authority, a preferential right to be appointed next friend or guardian for a suit. It gives effect to a suggestion made by Sir C. Turner, late Chief Justice of Madras, that when a Court makes over property to a next friend or guardian for the suit who is not a duly constituted guardian of the minor's property, it should be required to give such directions as, having regard to the nature of the property, may sufficiently protect it from waste and secure its proper application. And it amends section 464 of the Code in such a way as to save all local laws relating to suits by or against minors or persons of unsound mind.

"And to complete the list of amendments relating to pending legislation, there is a sub-section (section 12 (*2*)) of which the object is to remove a technical difficulty in the way of some legislation proposed or pending in the Bombay Council with respect to the allowances known locally as *toda giras haks*—allowances with an interesting history, which I will leave the Member in charge of the Bombay Bill to explain.

"The remaining sections relate to points to which the attention of the Legislative Department has been at various times directed, and with respect to some of which we have promised to amend the law whenever a suitable opportunity

occurred. About a few of them it was thought advisable to consult the High Courts before proposing an amendment of the law, and I have adopted such of the suggestions so referred as appeared to be supported by the weight of judicial authority.

"A good many of these amendments require no explanation, or none beyond that supplied by the Statement of Objects and Reasons, and I will only touch on the more important of them.

"There is a section (section 4) suggested by Mr. Justice Straight, which explains the meaning of the phrase 'cause of action' when applied to suits relating to contracts.

"There are two sections (sections 5 and 6) removing doubts which have been entertained as to the stages of a judicial proceeding at which the power of amendment may be exercised by a Court, and explaining the law in the direction of making that power more liberally exerciseable.

"It is desirable that the Courts should not be prevented by arbitrary rules from curing technical defects in the proceedings before them, and I have been assured by my friend Mr. Rattigan, now acting as Government Advocate for the Punjab, that the limitation of time imposed by the existing law for applications to remove the defect arising from a death of one of the parties in the course of a suit not unfrequently causes hardship and leads to the failure of justice, especially where the parties to the suit are ignorant agriculturists. At his suggestion I have inserted in the Bill some clauses (sections 17 and 37) intended to meet this point.

"There is a section (section 10) clearing up a doubt recently entertained in the Allahabad High Court as to the circumstances under which a set-off against a civil claim can be allowed. Speaking, as I am, to lay folk, I do not intend to discourse on the doctrine of set-off, which has been made the subject of many learned disquisitions. For the benefit of my legal brethren I will content myself with saying that I do not think section 111 of our Code was intended to be, or ought to be construed as, an exhaustive statement of the cases in which set-off may be allowed; that if Indian Courts could be trusted to decide judiciously and promptly what counter-claims can and what cannot be conveniently disposed of in a pending suit, I should be disposed to apply to them the same rules as have recently been adopted under the English Judicature Acts; but even in England these rules, though intended to produce finality, have often had the effect of protracting and complicating suits, and I fear that in India their working would be much more unsatisfactory.

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Therefore the only amendment which I propose is one of a very minor character, and its effect is to apply section 216 of the Code to all cases of set-off allowed under the existing law, whether they can be brought within section 111 or not.

"There is a leading case, called Semayne's case, well known to English lawyers, and usually treated as the authority for the *dictum* that an Englishman's house is his castle. I suppose it was in consequence of the rules laid down in, or believed to be deducible from, this case that section 271 of the Code provides that 'no person executing any process under this Code directing or authorizing seizure of moveable property shall . . . . . break open any outer door of a dwelling-house.' I should be the last person to advocate any undue interference with domestic privacy, but at the same time, I am not in favour of allowing any debtor, English or Indian, to employ the sanctity of his house-door as a means for avoiding or delaying payment of his just debts; and therefore I propose (by section 13) that the Courts should be empowered, under special circumstances, to make an order authorizing the breaking open of an outer door. I hope the Courts may be trusted to exercise this discretion in such a way as may minimize the risk of a breach of the peace. Of course the proviso as to entry into zanánas will be retained.

"I also propose to amend a section (section 320) which was the subject of much discussion in 1877 and 1879—the section under which the execution of decrees relating to immoveable property may be transferred to the Collector. Under the existing law there is no appeal provided from the Collector's orders in such cases. It is true that the Government of the North-Western Provinces has issued executive orders on the subject, but the validity of such rules may possibly be called in question, and I think it better to declare distinctly that rules may be made providing for an appeal and regulating its course and conditions. I think also that, if the Collector is to act effectively under these sections, it should be made clear that he is something more than a mere instrument of the Civil Courts.

"I have adopted a suggestion made to me by a gentlemen at the Bombay Bar that we should follow the recent English law by giving the Courts power to decree sale in lieu of partition in certain cases. It may obviously be inconvenient and difficult to divide a family house.

"There have been some difficulties about the working of the sections relating to suits by and against Native Princes and Chiefs. I propose, for their con-

venience, to make it clear that a fresh appointment of a person to prosecute or defend on their behalf need not be made in each case. I propose also to define more precisely by whom consent to the institution of a suit against a ruling Prince may be given, and to make the provisions of the law more elastic with respect to the mode of giving the consent, the cases in which the consent may be given, and the Courts to which the consent may apply. A reported case shows that doubts have been entertained as to the name by which a ruling Prince should sue or be sued, and I have been told that it is considered derogatory to the dignity of a ruling Prince or Chief that his personal name should be called out in open Court. There is no reason why deference should not be paid to sentiment and etiquette when they do not interfere with the substantial interests of justice, and therefore I propose that a ruling Prince or Chief may sue or be sued in the name of his State.

"It will be seen, on looking at the Bill, that, in order to make room for one of the new sections relating to suits by and against Native Chiefs, I have ousted section 434 of the Code from its present place and have given it a new place and a new number in the final chapter of the Code, where a convenient gap has been made by a recent repeal. I propose to do this, not for a mere draftsman's whim, but because the section now numbered 434, which relates to the execution in British India of decrees of Native States, is out of place in a chapter headed 'Suits by Aliens and by or against Foreign and Native Rulers'; and I cannot help suspecting that in consequence of its inappropriate position it may possibly have been overlooked by the Bench of Judges who decided a case reported in a recent number of the Calcutta Law Reports. If I am wrong in supposing this, the learned Judges will, I hope, forgive me; but at all events no harm can be done by removing the section from a chapter where one would not naturally think of looking for it.

"There has been much doubt as to what class of persons are entitled to take proceedings under section 539 as having a *direct* interest in a public charitable or religious trust. The class is one which it is impossible to define with accuracy, but, after perusal of the cases and consultation with the High Courts, I have come to the conclusion that the introduction of the adjective 'direct' into the section was unnecessary and has led to misconception, and therefore I propose to remove it.

"The remaining sections of the Bill are either unimportant or of a very technical character, and therefore I will not take up the time of the Council by

dwelling on their provisions, but will at once ask them to take into consideration the motion which stands in my name."

The Hon'ble SIR THEODORE HOPE said:—

"The subject upon which our hon'ble colleague the Law Member has just favoured us with so complete and interesting an exposition is one of extreme importance; and, having been a member—I may say a very active working member—of the Select Committees on the Civil Procedure Code Amendment Bills in 1877 and 1879, I wish to express, in the first place, my conviction—a conviction then felt by all those engaged in that work—that revisions of the Civil Procedure Code should only take place at very rare intervals. This opinion, I think I am right in saying, was shared at that time by the law authorities at home, and had in fact mainly contributed to the postponement of legislation on the preceding occasion in 1867, when it had been proposed by Mr. Harington. This reluctance to revise the Code is based on two grounds. One is the immense inconvenience which is caused to the Courts, the Bar and the public in general by the complete subversion of a long and elaborate enactment with which they have become familiar, and the destruction of translations, text-books and handy manuals which have been prepared to make it intelligible to ordinary people. The other and very important ground for this reluctance to change is the great time which is necessary for the elaboration of a new Code of the description in question. I say 'a new Code,' because, although in many instances only the old sections are substantially reproduced, as a matter of fact it is generally found that there are very few of them which do not either change their place, scope, substance or wording in some manner or other. Of the long time necessary there can be no better illustration than what took place in 1877, 1879 and 1882. I think I am not far wrong in saying that the Bill of 1877 would not have become law then but for the approaching departure from India of Sir Arthur Hobhouse, who was, very naturally, anxious—and the Government were also anxious—to complete the work to which he had given his attention during nearly the whole period of his Law Membership. Still, notwithstanding that, it was found by experience that it would have been a great deal better if we had had at least another year to work on the Bill; and in 1879, consequently, we were obliged to pass another Bill with an immense number of amendments. Still, the enactment having reached that stage, I think it was very much to be regretted that in 1882 a further complete alteration should have been made by re-enacting all the sections which were already law, along with certain minor changes. However, what we now have is not the law of 1877 or 1879, but the law of 1882, and I think it would be very much to be

deprecated that any change should be made now of fundamental importance except after the lapse of a very considerable period—a period which I think the Law Commission on one occasion declared should be at least ten years. Meanwhile, however, there can be, according to my humlbe judgment, no objection to such minor amending Bills as that which, so far as I understand its nature, our Hon'ble Law Member has brought forward on the present occasion, provided great care be taken not to make any change whatever which is not really unavoidable.

"I trust, too, that more than this may not be attempted even in the time of our hon'ble colleague's successor, unless indeed under one eventuality, and one only; and that is, if a decision should fortunately be arrived at for making very fundamental changes in our civil procedure so as to diminish the immense amount of routine which now invests—and I may say *infests*—all cases relating to petty amounts. If our procedure could be vastly simplified, in a way which has before now been indicated in this Council, and if some other changes, such as those which our hon'ble colleague lately alluded to as having proved advantageous in the case of the local legislation affecting the Dekkhan agricultural districts, could be introduced, then, and then alone, I think that a revision of this Code on a large scale might be justifiable at an earlier date than, say, 1892."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also introduced the Bill.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India* in English and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

GENERAL CLAUSES BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill for further shortening the language used in Acts of the Governor General in Council, and for other purposes. He said:—

"I propose to make some additions to a very useful Act which was passed in 1868, and which is known as the General Clauses Act. The object of that Act is to make the language of enactments of this Council shorter and more uniform, and to avoid vain repetitions, by generalizing certain definitions and rules

of frequent occurrence, and by declaring, once for all, that these definitions and rules shall apply to future Acts unless a contrary intention appears.

"The additions which I propose to make are based on my personal experience during the last few years. I have had a list prepared of the special definitions inserted in Acts of this Council, and I find on examination of this list that there are some dozen or so of these definitions which might with advantage be generalized and added to the list contained in the Act of 1868.

"I also propose to generalize certain provisions which have so frequently recurred in recent Acts as to have become what conveyancers call 'common form.' Among these provisions I will mention two, which have some bearing on the machinery and practice of legislation in this country.

"It is not as a rule desirable that an Act of this Council should be brought into operation immediately on its passing. An interval should be allowed for the publication of the Act both in English and in the vernaculars of the country, for its distribution, and, when it is of a complex character, for its study by the officers who will have to administer it and by the persons whom it will principally affect. In most cases also time must be given for making the administrative arrangements necessary for giving full effect to the Act.

"It has therefore been my practice to insert in every Bill, except where the proposed enactment is of great simplicity or of special urgency, a clause postponing the operation of the measure either until some future date specified in the Act or until a future date to be fixed by executive authority. But when an interval of this kind is provided it is often necessary to give some legal authority for the preliminary arrangements which have to be made, such as the appointment of officers and the making of rules. Accordingly it has become the practice to insert a clause providing that all necessary appointments, rules and so forth may be made during the interval between the passing of the Act and its coming into operation, but that they shall not take effect until the latter date. It will be remembered that some temporary inconvenience was caused by the accidental omission of such a clause from the Bengal Tenancy Act. I propose to generalize this clause, so as to obviate the necessity for its special enactment hereafter,

"I have referred to the rules which are generally required for the purpose of giving full effect to Acts of the legislature, and we all know that most

Indian Acts confer an extensive power to make such rules. I have observed, in the course of my experience as chairman of Select Committees, that the clauses giving this power are usually scrutinized with some jealousy by unofficial, and especially by Native, members of this Council, and I have much sympathy with their feelings on the subject. The obligation which a member in charge of a Bill is under of publicly explaining and defending the provisions which he proposes is a very wholesome check on hasty and ill-judged legislation, and it would not be constitutional that this check should be evaded by a wholesale delegation of legislative or quasi-legislative power to subordinate authorities. At the same time every one who has any familiarity with the work of this Council will admit that the delegation of power to make rules on subordinate matters is essential to good legislation. The proper function of this legislature is to determine the broad lines on which the law is to be administered: if it descends into and attempts to prescribe minute details of administration, it undertakes work which it is not fitted to perform and which it will perform badly. It is usually for the Legal Member, as the person responsible for the drafting of Acts, to suggest, and it is for the Council to determine, where the lines can be most fitly drawn between matters which should be settled by the legislature, matters which should be prescribed by rule, and matters which must be left to executive orders or to the discretion of individual officers.

"Whilst insisting, however, on the necessity for giving this rule-making power, I am fully impressed with the expediency of subjecting the rules made under it to the same kind of preliminary criticism as is applied to Acts of the legislature. I had an opportunity now nearly four years ago of expressing my sense of the great importance of inviting and facilitating criticisms and suggestions both from official and from non-official persons and bodies with respect to measures pending before the Legislative Council, and of explaining the measures which the Government of India had adopted and proposed with this view. I have nothing material to add to the remarks which I then made, and my subsequent experience certainly does not induce me to qualify them. On that occasion I directed attention to the quantity and importance of the subordinate legislation which is effected under delegated powers, and I said that, with a view of applying, as far as practicable, the same principles as had been applied to direct enactments of the legislature, the Government of India had recommended that any rule, regulation or notification which affected the outside public, whether made under executive authority or under the authority of

an Act, should, before being issued by the Local Government or Administration, and, where sanction was required, before being submitted for the sanction of the Governor General in Council, be published as a draft, with the view of ascertaining whether any valid objection could be taken to it. Extensive effect has since been given to this recommendation, and the Council will have observed that, when any recent Act authorizes the making of rules, it almost always requires drafts of the rules to be previously published in the manner which I have indicated. In fact, a provision to this effect has become a common form, and I propose now to stereotype it by inserting it in the Bill which I am asking leave to introduce.

"The provisions to which I have referred are, I think, the only provisions of general interest which the Bill contains. The remainder of the Bill consists of what may be fairly described as draftsman's clauses."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also introduced the Bill.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India* in English and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

GLANDERS AND FARCY ACT, 1879, EXTENSION BILL

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to extend the Glanders and Farcy Act, 1879, to the Bombay Presidency. He said:—

"This is an enactment which was passed in 1879, and which only extends to those parts of India which have no legislatures of their own. The Bengal and Madras legislatures have passed separate Acts on the same subject, but the Bombay Government now ask us to extend the Indian Act to Bombay, preferring this course to that of legislating for themselves. Accordingly, we propose to remove from the existing Act the words excluding its application to the Bombay Presidency."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also introduced the Bill.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India* in English and in the *Bombay Government Gazette* in English and in such other languages as the Local Government thinks fit.

The Motion was put and agreed to.

The Council adjourned to Wednesday, the 8th September, 1886.

S. HARVEY JAMES,
Offg. Secretary to the Govt. of India,
Legislative Department.

SIMLA;
The 3rd September, 1886.

Govt. C. B. Press, Simla.—No. 411 L. D.—3-9-86.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Viceregal Lodge, Simla, on Wednesday, the 15th September, 1886.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of the Punjab, LL.D., K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E., V.C.

The Hon'ble C. P. Ilbert, C.S.I., C.I.E.

The Hon'ble Sir T. C. Hope, K.C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble Major-General G. T. Chesney, R.E., C.S.I., C.I.E.

The Hon'ble J. W. Quinton.

The Hon'ble Colonel W. G. Davies, C.S.I.

The Hon'ble Rana Shankar Baksh Singh Bahadur, C.I.E.

ACT XXXVI OF 1858 AMENDMENT BILL.

The Hon'ble MR. ILBERT presented the Report of the Select Committee on the Bill to amend Act XXXVI of 1858 (*an Act relating to Lunatic Asylums*).

CIVIL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble MR. ILBERT moved that the Bill to amend the Code of Civil Procedure and the Indian Limitation Act, 1877, be referred to a Select Committee consisting of the Hon'ble Sir S. Bayley, the Hon'ble Mr. Quinton and the Mover.

The Motion was put and agreed to.

GENERAL CLAUSES BILL.

The Hon'ble MR. ILBERT also moved that the Bill for further shortening the language used in Acts of the Governor General in Council, and for other purposes, be referred to a Select Committee consisting of the Hon'ble Sir S. Bayley, the Hon'ble Mr. Quinton and the Mover.

The Motion was put and agreed to.

JHÁNSÍ AND MORAR BILL.

The Hon'ble MR. ILBERT also moved that the Bill to annex the Town and Fort of Jhánsí and certain adjacent Territory to the Jhánsí district, and for certain other purposes, be taken into consideration. He said that the Bill was of no great importance, it affected a very small number of people and a small quantity of cases, and it had not been considered necessary to refer it to a Select Committee. However, since the date of the introduction of the Bill he had received a few suggestions from persons interested in the measure, and the motions which stood in his name on the list of business were based on those suggestions. He thought it would be found that all the suggestions had been satisfactorily met, with the exception of the suggestion which had been made for giving a right of appeal from decrees and orders of the Gwalior Courts to our own Courts. As to this suggestion he agreed with His Honour the Lieutenant-Governor that it would be inexpedient to interfere in any way with those decrees and orders, and therefore he did not propose to bring forward any amendment on that point.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT then moved that words importing the neighbourhood to the town and fort of Jhánsí of the lands to be ceded by His Highness the Mahárájá Scindia to the British Government and by the British Government to His Highness be omitted from the preamble to, and section 2 of, Part I, and that the words "adjacent to the Jhánsí district" be inserted after the words "certain lands" in the third clause of that preamble. He explained that he asked leave of the Council to make this amendment in a general form, because it would involve a good many verbal modifications. In the Bill as introduced the lands proposed to be given and taken in exchange were described as in Jhánsí, but he now found that the territories which it was proposed to cede to the Mahárájá Scindia lay at a considerable distance from the town of Jhánsí, while some of the lands to be ceded by His Highness were not in the immediate neighbourhood of that town. He proposed therefore to correct the Bill in accordance with those facts.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the following clause be added to the preamble to Part II, and the following section to that Part:—

Clause.

"And whereas the period of limitation prescribed for suits in the territories of His Highness is twelve years, and it is expedient that persons having just claims which, but

for the cession of territory, they might have enforced in the Courts of His Highness, should not be debarred from enforcing those claims by reason of a shorter period of limitation being prescribed for any class of suits by the law in force in the Jhansí district".

Section.

Extension of period of limitation for certain suits.

"7. (1) Notwithstanding anything in the Indian Limitation Act, 1877, or in any other enactment, the Deputy Commissioner may, within such term, not exceeding two years from the commencement of this Act, as the Local Government may prescribe in this behalf, admit any suit of a nature cognizable by the Courts of British India, which, if there had not been a cession of territory, and the suit had been instituted in a Court of His Highness having jurisdiction with respect thereto, would not be liable to be dismissed by that Court by reason of its being barred by any law of limitation.

"(2) In the computation of the period of limitation for a suit referred to in sub-section (1) which the plaintiff has been debarred from instituting by reason of the cession of the town and fort of Jhánsí to the British Government, there shall be excluded from the period the time which has elapsed between the cession of the town and fort and the commencement of this Act.

"(3) Subject to revision by the Commissioner of the Jhánsí Division, an order of the Deputy Commissioner admitting or refusing to admit a suit under sub-section (1) shall be final."

He explained that this amendment had been inserted at the suggestion of the Commissioner and Deputy Commissioner of Jhánsí, and was in accordance with a request preferred to him (MR. ILBERT) by a local banker named Seth Sooraj Raj on behalf of the trading community of the town of Jhánsí. The facts were that under the Mahárájá's law the period of limitation prescribed for certain suits was twelve years, whereas in British territory the period was only three years; and it was represented that some hardship might be caused if persons living in the newly ceded territories were suddenly brought under a different law. In order to remove that hardship it was proposed to grant an extension of the period of limitation for a period not exceeding two years notwithstanding that such suits would be time-barred under the law in British territory.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the following further clause be added to the preamble to Part II and the following further section to that Part:—

Clause.

"And whereas it is expedient that suits pending in the Courts of His Highness and left undetermined by those Courts by reason of cession of territory should be continued in the Courts of the Jhánsí district".

Section.

"8. An original suit pending in a Court of His Highness and left undetermined by that Court by reason of cession of territory may be continued, under the law of limitation applicable to that Court but otherwise in accordance with the law and procedure of British Indian Courts, in any Court in the Jhánsí district subordinate to the Court of the Commissioner which the Deputy Commissioner may appoint in that behalf."

Continuance of pending suits.

He explained that this amendment, the meaning of which was obvious, had also been included in the suggestions of the Deputy Commissioner and Seth Sooraj Raj.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the following further clause be added to the preamble to Part II and the following further section to that Part:—

Clause.

"And whereas it is expedient to remove doubts as to the effect of the law in force in the Jhánsí district, with respect to registration and stamps on documents, and instruments to which at the time of their execution the law of His Highness applied, and the law of British India did not apply;"

Section.

"9. The provisions of the law of British India with respect to the consequences of documents being unregistered or instruments being unstamped shall not apply to any document or instrument which may have been executed before a date to be prescribed in this behalf by the Local Government, and to which the law of His Highness applied, and the law of British India did not apply at the time of its execution."

Saving in favour of unregistered documents and unstamped instruments.

He said that he was not sure that this amendment was strictly necessary, but it had been asked for by the traders at Jhánsí, and its insertion could certainly do no harm and might possibly remove some misapprehension on the points to which it related.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the following sub-section be substituted for sub-section (2) of section 6, namely:—

"(2) If in any case the Deputy Commissioner is of opinion that for special reasons the sanction ought to be withheld or ought to be granted subject to conditions, he may

either withhold his sanction or permit the application to be made on any conditions which in the circumstances he deems it proper to impose; but in either of those cases he shall record the reasons in writing."

He explained that this amendment was proposed at the instance of His Honour the Lieutenant-Governor of the North-Western Provinces with a view to making it clear that the power of withholding sanction to the execution of decrees and orders of the Gwalior Courts was only to be exercised in very exceptional cases.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that in section 10 of the Bill in its present form (section 7 of the Bill as introduced) the words and figures "articles 66 to 75 (both inclusive)" be substituted for the words and figures "articles 74 and 75."

He explained that it was intended by this amendment to enable persons lately trading at Morar to sue at Jhánsí or Agra, or other places appointed by the Governor General in Council, on bonds and bills of exchange and on promissory notes other than those specified in the articles in the original Bill. Thus the object of the section would be more effectually attained than it would be in the more restrictive form in which that section was originally drawn.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

LIEUTENANT-GOVERNOR'S (N.-W. P.) FUNCTIONS BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to legalize the discharge by the Lieutenant-Governor of the North-Western Provinces of certain functions assigned to the Governor General in Council.

BURMA INDIGENOUS TRIBES PROTECTION BILL.

The Hon'ble MR. ILBERT also moved for leave to introduce a Bill to provide for the protection of Indigenous Tribes in Burma. He said:—"The object of this Bill is to afford some protection to the Karens and other indigenous

tribes in Lower Burma, especially in the Tounghoo District, against the annoyance and injury caused to them by the acts of squatters belonging to other tribes and races. It appears that Burman, Shan and Chinese strangers occasionally settle in these Karen villages, and cause great annoyance to the Karens. The Karens are a quiet and inoffensive race, and as a rule, either from shyness or timidity, they do not resist the intruders, but cases have arisen in which they have been goaded into acts of lawlessness. A characteristic case of this kind occurred in 1883. There is a large Karen village called Bawgale. This village is inhabited mainly by Christian Karens, and is the site of an American Baptist Chapel. In 1883 a number of travelling Shan traders established themselves in this village with large herds of cattle. 1883 was not the first year in which they had squatted in the village, but in former years there were not so many of them and the Karens had not complained. In 1883, however, they made themselves an intolerable nuisance to the permanent inhabitants. They picketed their bullocks near the Mission Chapel and on the village-paths, and disturbed the peace of the village by gambling and disorderly habits. The consequence was that the Karens under the leadership of an American Missionary gentleman took the law into their own lands, destroyed the houses of the Shan squatters and summarily ejected them from the village. The results were rather unfortunate for the American gentleman, for there was no law to prohibit the Shans from settling in the village, nor had the Karens any right to eject them, and so the matter went before the Law Courts, and the Missionary was fined Rs. 50 for contravening section 426 of the Indian Penal Code. The case attracted the attention of the Local Government to the position of the Karens generally, and it was satisfied that, although the law had in this particular instance been contravened, yet the Karens had sufficient ground for complaint. Lest it should be supposed that the Government had acted on the representations of the Missionaries alone, I will read a short extract from a report submitted to the Chief Commissioner by Mr. Bridges, who had been for some years Settlement-officer in the Bassein district, where there are large settlements of Karens. In his Report dated the 30th July, 1883, he wrote as follows :—

"I believe that the account given by the Missionaries of what is actually taking place in Karen villages is substantially correct. * * * I have continually heard complaints in the Karen villages of Burmese loafers settling down among them, stealing their property, swindling them out of their lands and crops, and introducing opium and gambling among them. * * * The Karens will not as a rule come to officials and complain unless they see them in their villages. * * * What I have said applies chiefly to the British Burman Karen villages: but the state of things is much worse in the case of the Talaing Karens, who have as a rule not been converted. * * * In the Aingme and

Kyaukkanni circles I found the Talaing Karen villages in a dreadful state; the Burmans had settled down in nearly all their villages; they had swindled them out of their lands, and in many cases reduced them to a state of semi-serfdom. The Talaing Karens had taken to opium-eating and thieving, and in one or two villages I found that women and young children were opium-eaters. The Ywa-lugyis (village-elders) were in many cases Upper Burman gamblers and opium-eaters, who, instead of helping and protecting the villagers, either swindled themselves or allowed others to do this. * * * I think the Burmans who have already settled down in Karen villages should be compelled to remove their houses when their presence is complained of."

"That is a statement of the facts with which we have to deal, and I think it quite justifies legislation of the nature now proposed. The nature of the legislation is, no doubt, somewhat exceptional, but I think it is fully warranted by the peculiarities of the relations between these indigenous tribes and their neighbours, and some precedent may be found for it in the provisions which it has been found necessary to apply to the Garo Hills in the Province of Assam. A Regulation has been passed for those Hills which prohibits the acquisition of interest in land by settlers except by special sanction, and it is a principle somewhat similar to this which I propose to apply in the present measure.

"The provisions of the Bill are very simple. It empowers the Chief Commissioner to apply the proposed Act to such local areas as he may by notification prescribe, and it defines the term 'village' so as to restrict the operation of the proposed law to purely rural tracts. Then it declares the circumstances under which a resident or intending resident may be excluded or ejected from a village. These circumstances are that the majority of the residents of the village belong to some indigenous tribe, and that not less than one-half of the cultivating householders of the village desire ejection or exclusion of the resident or intending resident, who must not be of the same race as the majority of the residents of the village, or cultivate land within three miles of the village or have resided in the village for twelve years or upwards. The Bill further provides for compensation to persons who have been compelled to vacate any land or house in a village in consequence of their ejection therefrom. Then, under another section, the Chief Commissioner has power to make rules with the sanction of the Governor General in Council prescribing the mode in which the desire of the cultivating householders of a village to eject or exclude any one therefrom is to be ascertained and recorded, empowering certain persons to eject or exclude persons in pursuance of the recorded desire and on behalf of the cultivating householders, and prescribing the procedure to be followed in such cases, and the mode in which compensation under the proposed Act is to be ascertained. Then there is a power

which enables the Local Government to direct in any rule that a breach of it shall be punished with fine which may extend to one hundred rupees, or with imprisonment which may extend to three months, or with both. Lastly, there is a section containing the usual formal matter as to the procedure for making and publishing rules."

The Motion was put and agreed to.

OUDH WASIKAS BILL.

The Hon'ble MR. QUINTON presented the Report of the Select Committee on the Bill to declare certain allowances collectively known as Oudh Wasikas to be pensions within the meaning of the Pensions Act, 1871.

The Council adjourned to Friday, the 24th September, 1886.

S. HARVEY JAMES,
Offg. Secretary to the Govt. of India,
Legislative Department.

SIMLA;
The 17th September, 1886.

NOTE.—The Meeting fixed for the 8th September, 1886, was subsequently postponed to the 15th idem.

Govt. C. B. Press, Simla.—No. 470 L. D.—20-9-86.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Viceregal Lodge, Simla, on Friday, the 24th September, 1886.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of the Punjab, LL.D., K.C.S.I., C.I.E.

His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E., V.C.

The Hon'ble C. P. Ilbert, C.S.I., C.I.E.

The Hon'ble Sir T. C. Hope, K.C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble Major-General G. T. Chesney, R.E., C.S.I., C.I.E.

The Hon'ble J. W. Quinton.

The Hon'ble Colonel W. G. Davies, C.S.I.

The Hon'ble Rana Shankar Baksh Singh Bahadur, C.I.E.

ACT XXXVI OF 1858 AMENDMENT BILL.

The Hon'ble MR. ILBERT moved that the Report of the Select Committee on the Bill to amend Act XXXVI of 1858 (*an Act relating to Lunatic Asylums*) be taken into consideration. He said:—

"This is a Bill which was introduced by my friend Sir Steuart Bayley last December with the object of removing a slight defect in the Lunatic Asylums Act. The Bill as introduced was approved by the local authorities, but certain additional amendments of the Act were suggested by the Governments of Bengal and the Punjab, and it was thought desirable to make a further reference on these suggestions. After considering the replies to this further reference we have added to the Bill clauses expressly legalising the detention of supposed lunatics for a limited time for purposes of observation, and also removing an inconvenience pointed out by the Punjab Government which had been caused by the requirement that lunatics who are Natives of India should in all cases be sent to an asylum at the Presidency. The reasons for these modifications of the Bill are explained in the Report of the Select Committee, and I need not add to the explanations which are to be found there."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

LIEUTENANT-GOVERNOR'S (N.-W. P.) FUNCTIONS BILL.

The Hon'ble MR. ILBERT also moved that the Report of the Select Committee on the Bill to legalize the discharge by the Lieutenant-Governor of the North-Western Provinces of certain functions assigned to the Governor General in Council be taken into consideration. He said:—

"The passing of this Bill has been delayed for some time because it was proposed to add to it a section validating the exercise by the Lieutenant-Governor of the North-Western Provinces of certain powers under a Regulation of 1803, which he appears to have exercised without question during the forty years that elapsed between the constitution of his office and the repeal of the Regulation. The proposal was quite reasonable, but there was at the time that it was made just a possibility that its adoption might affect the interests of some parties to a suit then pending, and accordingly the further progress of the Bill was postponed. There is now, so far as I am aware, no litigation before any Court which can be influenced by the addition of the proposed section, and therefore it has been added to the Bill.

"We have also removed from the schedule to the Bill a Regulation of 1800, to which reference has been made unnecessary by the passing of the little Act of this year about the Mirzápur stone-quarries."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

BURMA INDIGENOUS TRIBES PROTECTION BILL.

The Hon'ble MR. ILBERT also introduced the Bill to provide for the protection of Indigenous Tribes in Burma, and moved that it be referred to a Select Committee consisting of the Hon'ble Sir A. Colvin, the Hon'ble Mr. Quinton and the Mover.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill and Statement of Objects and Reasons be published in the *British Burma Gazette* in English and in such other languages as the Local Administration thinks fit.

The Motion was put and agreed to.

UPPER BURMA LAWS BILL.

The Hon'ble MR. ILBERT also presented the Report of the Select Committee on the Bill to declare the law in force in Upper Burma, remarking that, though it was only formally laid on the table on that day, it had been in the hands of hon'ble members for the last few days; and under those circumstances he had no hesitation in asking that it should be taken into consideration at once. It was desirable, for administrative reasons, that there should be no avoidable delay in the passing of the Bill.

The Hon'ble MR. ILBERT also moved that the Report be taken into consideration. He said:—

"When introducing this Bill in July last, I said that its object was to lay the foundation of a system of law for Upper Burma, and I explained the system under which that Province had been provisionally administered under British rule. Since then I have seen statements to the effect that the provisions of the law have been totally ignored in Upper Burma, and that the people of that Province have been deprived of the safeguards against injustice to which they are legally entitled. As such statements are calculated to convey an entirely erroneous impression of the facts, it may be desirable that I should, at the risk of repetition, describe again the nature of the provisional administration which this measure and the Regulations by which it is to be supplemented are intended to supersede. That administration has been conducted in accordance with certain provisional instructions, which were framed by Sir Charles Bernard and approved by the Government of India. The object of those instructions was to apply to Upper Burma the provisions of the Indian Codes so far as they were applicable to the circumstances of the country and suitable to the customs and habits of the people. Certain variations from the precise procedure laid down by the Codes were considered necessary. Among the most important of these variations was the substitution for the method of appeals provided by the Codes of a system of review and revision by superior authorities. With the view of securing regularity of procedure and guarding against failures of justice, special stress was laid on the exercise of the powers of review and revision thus

conferred, and all those who are familiar with the administration of justice in frontier tracts are aware how much better these powers are adapted to the circumstances of such tracts than the ordinary procedure of appeal provided by the Codes. I need not go through the other variations between the instructions and the Codes. They are all of a similar character, and such as were rendered necessary by the exceptional and transitional state of things with which we had to deal.

"I believe that these instructions have worked satisfactorily, and have proved to be well adapted to their purpose. Careful inquiry has been made into all cases in which officers of the British Administration have been charged with oppressive conduct, or abuse of the powers entrusted to them; and the result of the inquiry has been in each case to show that the charge either had been grossly exaggerated or had no foundation in fact. As to one point there can be no room for doubt, namely, that, notwithstanding the difficulties with which our officers have had to contend, the administration of justice in Upper Burma under British rule has constituted an immense advance on anything which existed under the late regime.

"I am aware that the 'instructions' are open to technical objections, on the ground that certain Indian Acts, including the general Codes, were extended to Upper Burma by the mere fact of its incorporation in the Indian Empire, and that the instructions issued last spring are not in precise accordance with those Acts. But it was obviously impossible to work those Acts immediately and without modification in a Province so situated as Upper Burma. The choice practically lay between adherence to the letter of the law and observance of its spirit, and we preferred the latter course. In asking the Council, as I do by this Bill, to give retrospective validity to the provisional instructions of last spring, I confidently affirm that I am not asking them to condone any act, omission or practice inconsistent with the substantial interests of justice.

"I have said that the law embodied in this Bill will be supplemented by Regulations under the Statute of 1870. Until this Bill has been passed, there will be no authority competent to submit those Regulations in the manner required by the Statute. But much time has been devoted to them during the last few months; they have been carefully considered by the Government of India in consultation with the local authorities; they are now in a very forward state of preparation; and I believe that a very short time will elapse before they become law. When it is remembered how long a period elapsed before anything like a settled system of law was introduced into such Provinces as

Oudh and the Punjab, it will be seen that the Government is not chargeable with undue delay in the performance of its task of providing a Code of laws suitable to the circumstances of its new Province.

"To return to the Bill. The alterations made by the Select Committee are neither numerous nor important, and are all, or nearly all, based on suggestions made by Sir Charles Bernard after consultation with his officers.

"There are certain provisions of the Bill which ought to come into force simultaneously with the Regulations to which I have referred, and we have therefore postponed their operation for a period which will not, I hope, exceed a few weeks. We have also defined somewhat more precisely the local area to which certain parts of the Bill are to apply. There is no present intention of importing British law into the Shan States, and therefore we have excluded those States from the operation of the laws which we declare in force in Upper Burma, merely reserving a power, which may possibly be useful hereafter, to introduce into any portions of those States such laws, if any, as may be required. We have made a few additional modifications in the Acts scheduled for application to Upper Burma in the narrower sense of the word, and we have made a few additions to the list of those Acts. But, as will be seen from our Report, none of these alterations are of any material importance, and the Bill which I am asking the Council to pass is, in all its substantial features, that which was introduced last July."

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

MILITARY COURTS OF REQUESTS ABOLITION BILL.

The Hon'ble MAJOR-GENERAL CHESNEY moved for leave to introduce a Bill to abolish Military Courts of Requests as established by Indian Military Law. He said:—

"Courts of Requests were first established in India by a Regulation of the year 1810, and the object was stated to be to afford means to sutlers and others of obtaining a remedy in case of debt against military officers and soldiers and also to encourage sutlers and others to settle in military cantonments. The

law was first recognized by the English Statute Law in 1825; at that time practically a sutler or trader in a camp had no remedy against an officer or soldier for the recovery of small claims, and these Courts were established only to afford such means of remedy. But in course of time, as Small Cause Courts have extended throughout India, the necessity for separate Courts of this kind no longer exists; in fact, the Courts are merely the relic of a state of things which has long passed away, and moreover, as stated in the Statement of Objects and Reasons, Military Courts of Requests are in many respects more severe than either the English law contemplates or the Government of India would now be prepared to allow if legislating in the first instance. It is therefore proposed to abolish Military Courts of Requests, so far as such abolition is not repugnant to the provisions of the English Army Act.

"The Statement of Objects and Reasons explains the nature of the proposed Bill."

The Motion was put and agreed to.

The Hon'ble MAJOR-GENERAL CHESNEY also introduced the Bill.

The Hon'ble MAJOR-GENERAL CHESNEY also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India* in English and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

OUDH WASIKAS BILL.

The Hon'ble MR. QUINTON moved that the Report of the Select Committee on the Bill to declare certain allowances collectively known as Oudh Wasikas to be pensions within the meaning of the Pensions Act, 1871, be taken into consideration. He said:—

"The Select Committee have altered the Bill in two points. They have, firstly, omitted those portions of it which contained any reference to the 5th Oudh loan, as the Local Government have brought to their notice that there are no pensions under that loan now remaining, all allowances or pensions payable on account of it having been commuted in accordance with the terms of the treaty under which the loan was made.

"Secondly, they have re-drafted section 2 of the Bill so as to make it clear that the allowances are declared to be within the meaning of the Pensions

Act with no ulterior object but only for the limited purpose of barring the jurisdiction of the Civil Courts in respect of claims relating to these allowances except on certain conditions, and of protecting them from attachment at the instance of creditors.

"There is nothing novel in these provisions. They have in effect been acted on since the annexation of Oudh, and rules on these matters were drawn up under section 14 of the Pensions Act of 1871, the applicability of which to the Wasika allowances has only within a recent period been the subject of doubt. In the Statement of Objects and Reasons I intimated that the legislation respecting the Táj Mahál's pension in 1880 suggested a question as to Wasikas being pensions within the meaning of the Pensions Act of 1871; and a year or two ago, Mr. Young, then the officiating and now the substantive Judicial Commissioner of Oudh, ruled that these allowances were liable to attachment under civil decrees as being outside the Pensions Act. On the correctness of this judgment I offer no opinion, but it is opposed to the practice which has obtained under the orders of Government for 30 years, and, unless that practice was inexpedient, has rendered legislation inevitable in the interests of the Wasikadárs themselves. The Government believes, however, that the practice which has hitherto obtained is salutary, that these allowances should not become the subject of litigation in the Civil Courts, and that the holders of them should not be reduced to destitution by the attachment of them in execution of civil decrees.

"The letter of the Commissioner of Lucknow printed as a paper on the Bill, memorials received by the Select Committee and by the Government, and notices of the measure in the public Press show nevertheless that the scope of the Bill has been misapprehended, and that in many quarters a notion prevails that under cover of this enactment Government intend to facilitate the resumption or reduction of Wasikas at some future time and to appropriate funds for which they are bound to account as trustee.

"As to the former point I hope the explanation I have just given of the meaning and effect of the Bill will dispel all misunderstanding; and as to the latter, if I am called upon to notice such imputations, I can only say that the Bill makes no alteration in the position of Government in respect of these allowances, and that all courses now open to claimants against Government on account of them will be equally open to them after the Bill becomes law."

The Motion was put and agreed to.

The Hon'ble MR. QUINTON also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

OUDH RENT BILL.

The Hon'ble MR. QUINTON also presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to Rent in Oudh.

The Council adjourned to Thursday, the 30th September, 1886.

S. HARVEY JAMES,
Offg. Secretary to the Govt. of India,
Legislative Department.

SIMLA;
The 30th September, 1886.

Govt. C. B. Press, Simla.—No. 497 L. D.—1-10-86.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 30th September, 1886.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.
His Honour the Lieutenant-Governor of the Punjab, LL.D., K.C.S.I., C.I.E.
His Excellency the Commander-in-Chief, Bart., G.C.B., C.I.E., V.C.
The Hon'ble C. P. Ilbert, C.S.I., C.I.E.
The Hon'ble Sir T. C. Hope, K.C.S.I., C.I.E.
The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.
The Hon'ble Major-General G. T. Chesney, R.E., C.S.I., C.I.E.
The Hon'ble J. W. Quinton.
The Hon'ble Colonel W. G. Davies, C.S.I.
The Hon'ble Rana Shankar Baksh Singh Bahadur, C.I.E.

MILITARY COURTS OF REQUESTS ABOLITION BILL.

The Hon'ble MAJOR-GENERAL CHESNEY moved that the Bill to abolish Military Courts of Requests as established by Indian Military Law be referred to a Select Committee consisting of the Hon'ble Mr. Ilbert, the Hon'ble Mr. Peile and the Mover.

The Motion was put and agreed to.

OUDH RENT BILL.

The Hon'ble MR. QUINTON moved that the Report of the Select Committee on the Bill to consolidate and amend the law relating to Rent in Oudh be taken into consideration. He said:—

"I would ask Council to give me their attention while I attempt to describe briefly the course which the Bill has taken since it was referred to the Select Committee, and to account for some of the more important changes in it which we recommend. I shall pass over those points which will be discussed on the amendments standing on the paper in the name of my hon'ble friend Rana Shankar Baksh Singh.

"The Bill was duly published for the information of those concerned; it was sent to the Government of the North-Western Provinces and Oudh for a further expression of opinion; and that Government in turn invited on it the opinions of selected officers. Further, a committee of the Taluqdárs Association assembled at Lucknow in August and discussed the measure in great detail among themselves and in almost daily consultation with the Government—His Honour the Lieutenant-Governor having come down from Naini Tal and remained at Lucknow a fortnight for this purpose. I would also remind Council that the enquiries which led to Government's undertaking this legislation began so far back as 1881, and that the main principles of the Bill have been under discussion for the past three years.

"The Bill as finally settled by the Select Committee is the outcome of these consultations and discussions, and is based almost entirely on the recommendations of the Local Government, which in preparing the measure has paid great regard to the representations of the Taluqdárs, who as landlords own three-fifths of the soil of the Province. Those gentlemen are entitled to great credit for the loyalty and public spirit with which they have advanced to meet the wishes of Government in devising measures for the protection of the tenantry, and this attitude of theirs has naturally secured for their representations the most favourable consideration consistent with securing the objects of the Bill both with the Local Government and the Select Committee. The amendments to be brought forward today by my hon'ble friend will show that, except in a few points,—and those by no means the most important regulated by the Bill,—the Taluqdárs have little fault to find with it.

"Section 4 of the Bill as introduced barred contracts made before or after the passing of the Act, which would have the effect of defeating the provisions of the Bill respecting the enhancement of rents and ejectment of tenants in whose favour statutory tenancies were created.

"My hon'ble friend Rana Sankar Baksh Singh in his speech on the motion to refer to Select Committee, and the Association of the Taluqdárs at Lucknow, objected to the section as too general, and as making no allowance for reclamation-leases in jungle and alluvial lands, and for reclamations effected by or at the expense of the landlords. Similar representations were also made on behalf of persons on whom Government had conferred grants of waste-land in Oudh. These grants had been made on special conditions, which for the most part contemplated or required a gradual extension of the cultivation. The fairness of the objections was admitted by the Lieutenant-Governor and the Select Committee, and the

section has been amended so as to exclude from its operation for a period of fourteen years contracts in respect of land brought under cultivation by reclamation-leases or at the expense of the landlords after it has lain waste or fallow for periods exceeding seven years. It will not, we believe, pay a landlord to allow land to lie fallow for seven years in order to get round the provisions of the Bill respecting enhancement of rent and ejectment; and, on the other hand, a landlord would, in most cases, have great difficulty in obtaining at first from tenants admitted to the cultivation of such land a rent which would be at all fair or adequate for a period of seven years. As we have amended the section, a landlord will be able to let the land at progressive rents agreed upon between the parties.

"The same principles apply to alluvial lands which are periodically surveyed by Government in order to determine what alterations should be made in the revenue, and to waste-land grants; but we have on the suggestion of the Lieutenant-Governor, and in view of the exceptional and fluctuating nature of their cultivation, included these two classes of land in Schedule D of the Bill, which will have the effect of taking them out of the operation of the sections relating to enhancement and ejectment. In alluvial tracts cultivation may vary from year to year, and in waste-land grants the special conditions on which they were made have given rise to a system of cultivation with which interference is not necessary or desirable.

"Compensation for disturbance has disappeared from the Bill. When this Bill was last before Council I endeavoured to give some reasons why the Taluqdárs' objections to this principle should not be insisted on, and Your Excellency explained that under similar circumstances the payment of compensation for disturbance to a tenant in Ireland implied no acknowledgment by the landlord of a right of permanent occupancy in the tenant's favour, and that the injury sustained by unexpected ejectment entailed upon the tenant the loss not merely of his improvements but a further loss occasioned by the disturbance introduced into his plan of life and his industrial undertakings. The Hon'ble Sir Steuart Bayley argued to the same effect, but admitted that there were other objections from a landlord's point of view which made him reserve his final opinion; and it was estimated both by him and by myself that, if security for the objects aimed at by the Bill could be attained by any other method, such a proposal would receive favourable consideration. My hon'ble friend Rana Shankar Baksh Singh stoutly opposed the provision in Council, and, in the discussions with the Taluqdárs at Lucknow to which I have already alluded, these gentlemen adhered to

their previous objections, and were not influenced by the arguments used here and by the Lieutenant-Governor in support of the principle. They recognized, however, the necessity for some check on the issue of notices of eviction which had for the last eighteen years been largely used as an engine for enhancement. After long discussion the Taluqdárs tendered as an alternative to compensation for disturbance the plan now embodied in the Bill, which is briefly this, that notices of ejectment issued upon tenants ordinarily entitled to a renewal of the statutory tenancy created by the Act should bear a stamp-duty equivalent to half a year's rent of the holdings, subject to a maximum of Rs. 25. The Local Government and the Select Committee are not insensible to the objections which may be brought against this proposal. They feel that it confers no direct benefit on the ousted tenant, and they are aware that it may, and probably will, expose Government to the imputation of attempting to make money out of ejectments. As to the first point, the truth of the allegation and the force of the argument must be admitted. The landlords, however, protested most urgently against being obliged to pay compensation to a tenant whom it was every one's interest to get rid of on account of turbulence or bad behaviour; and the Select Committee, recognizing the justice of this aspect of the case, can only hope that the existence of the provision in the law will render ejectments the exception and not the rule, and subject to eviction only tenants to whom that process can be applied with advantage to their neighbours and to the improvement of the cultivation of the soil. With reference to what fell from Your Excellency as to the disturbance of the raiyat's plan of life and industrial undertakings caused by unexpected eviction, I may point out that the Bill improves to some extent the condition of the tenant in this respect. Under the existing law he can be turned out on a month's notice, while the Bill fixes the term for such a notice at six months.

"The imputation of cupidity against Government is one on which my hon'ble friend Sir Auckland Colvin, who on a recent occasion displayed a nervous solicitude for the reputation of a Finance Member, will doubtless feel sensitive, and I shall leave him to deal with it, as it affects the Government of India. As to the Local Government, I cannot do better than read to the Council the views of Sir Alfred Lyall already quoted in our Report:—

'So far as this Government is concerned, there is no desire whatever to increase the stamp-revenue at the landlord's expense, or to impose any additional costs of this kind upon transactions between landlord and tenant. The Lieutenant-Governor would certainly not have proposed, for his own part, to turn compensation into a tax; and he has no doubt that it would, on principle, have been better to adhere to the simple and logical provision which would prevent a landlord from ejecting a tenant until he also gave him some indemnity.

'Nevertheless, when this alternative is put forward and supported by the Association, and since it has become clear that the Taluqdárs unanimously prefer to pay stamp-duty rather than compensation to the tenant, while undoubtedly the stamp-duty would answer the purpose of a check on ejectment as effectively as a compensation-payment at the same rate, the Lieutenant-Governor feels bound to accept and submit to His Excellency the Governor General in Council this proposal as an admissible compromise upon an important and closely-debated provision of the Bill.'

"It is believed by Sir Alfred Lyall, after consulting many officers of experience, that the necessity for paying half a year's rent will probably act as a sufficient check upon inconsiderate and injurious evictions; and he is further of opinion that a varying stamp-duty is better than a fixed one, which, if of high value, would be prohibitive of the ejectment of smaller tenants, among whom there is the greatest probability of finding indifferent cultivators and bad characters. I may add that the scale of compensation for disturbance originally proposed, namely, one year's rent, was very powerfully criticised as oppressive to the landlords when taken in connection with the limitation of enhancement and the period of the statutory tenancies proposed by the Bill; though, had there been no such limitations on enhancement, it would not fall heavily. This argument it might have been impossible for us altogether to ignore had the original proposal been adhered to.

"In the debate on the second reading of the Bill, it was intimated by Your Excellency that the payment of compensation for disturbance might be neutralised by a grant of an eight years' lease. Compensation for disturbance, as I have already said, has disappeared from the Bill, but we have applied the same principle to the substitute proposed for it, and have made this clear by a section (69) inserted for the first time. A lease of a holding for eight years or upwards must, as regards enhancement, be in conformity with the provisions of the Bill, but exempts the landlord from liability to pay what I may call the penal stamp-duty imposed on notices of ejectment. A landlord wishing to eject a tenant on the expiration of an eight years' lease need not pay such stamp-duty.

"Section 129 of the Bill as introduced gave the Local Government power to revise and settle for a period of ten years the rents of an estate suffering from grave mismanagement. This power was meant to formulate the conditions on which the Government might enforce the penalties of the sanads by which Taluqdárs hold their estates, and might also, it was thought, prove not unacceptable to those landlords as substituting for vague conditions enforceable at the will of the Executive Government a more definite stipulation and penalty regulated by law. This expectation, however, turned out to be ill-founded. The

Taluqdárs objected very strongly to the section, and preferred to lie under the sword of Damocles in the shape of the sanad to being relieved in the manner proposed of the risk of its falling on their necks. In view of this and of the safeguards provided by the Bill against oppressive enhancement, Sir Alfred Lyall considers it unnecessary to ask the legislature to arm the Executive Government with this authority by special enactment, and, in deference to this opinion, the Select Committee propose the omission of the section. They wish it, however, to be clearly understood that this omission in their opinion in no way affects the efficacy and force of the sanads, the obligations imposed on the Taluqdárs by those instruments or the power of the Executive Government to judge whether the conditions of the grant have been infringed and to inflict the penalty attached to such infringement."

The Hon'ble RANA SHANKAR BAKSH SINGH addressed the Council in the Vernacular, a translation of his remarks being read by the Secretary as follows:—

"With Your Lordship's permission I humbly beg to offer a few remarks on the Oudh Rent Bill as amended by the Select Committee and submitted to this Hon'ble Council for consideration and final disposal.

"When the Bill was initiated it could hardly be expected that such important, difficult and intricate questions as it involved would be so easily and promptly settled. But the difficulties, which then appeared to be almost insurmountable, have, I am glad to say, been successfully removed; and this desirable end has been achieved no less through the especial attention bestowed on the subject by His Honour the Lieutenant-Governor, and the keen interest taken by His Honour in the discussion and settlement of details, than through the peaceful disposition and loyal conduct of the Taluqdárs.

"I think I need scarcely remind this Hon'ble Council how the Taluqdárs had, subject to certain important exceptions, accepted the two main principles of the Bill,—I mean the rules about the seven years' lease, and the limitation of enhancement to one anna in the rupee,—and how the Local Government had consented to expunge section 129 of the original Bill and the rule about compensation for disturbance. But, in order to more effectually check evictions, it was subsequently resolved that a stamp-duty be levied on all ejectment-notices, and that, if the landlord desired to be exempted from the payment of such duty, he should be allowed to grant a longer lease. The last plan was suggested by Your Excellency in the speech on the Rent Bill made on the 9th June last.

"The way these points were settled may be readily ascertained from the correspondence on the subject, and need not be explained here. After the more important questions had been satisfactorily settled, the minor objections of the Taluqdárs were considered; and the few amendments proposed by them after careful consideration, and in a fair and unprejudiced spirit, were wholly or partially approved by the Local Government, adopted by the Select Committee and embodied by them in the Bill now before Your Excellency's Council.

"The Taluqdárs' objections to section 4 of the Bill, though respectfully urged, were exceptionally strong, and attracted sufficient attention at the time; but subsequently it was found impossible to amend this section to the extent they desired, because any further amendment would make it inconsistent with the principles of the seven years' lease and the limitation of enhancement as finally accepted by the Taluqdárs.

"As regards section 51 of the present Bill, the Taluqdárs had requested that it should be expunged, but the Local Government did not recommend this, and in Select Committee the section was left to stand as it is. In my humble opinion this section should be maintained, and with Your Lordship's permission I will briefly state the reasons which have led me to this conclusion.

"Though the Taluqdárs have, from philanthropic and liberal motives, or in deference to the wishes of Government, accepted the provision as to limitation of enhancement to one anna in the rupee, it is not unlikely that after a few years' experience the Government will find the rule in question inapplicable to all classes of land. There are certain descriptions of land which will not admit of any enhancement at all, while there are others for which the proposed enhancement of one anna in the rupee will be quite insufficient, and a third class of land will only bear an enhancement of less than one anna in the rupee. From the incidence of enhancement on all the three classes of land the landlord is sure to suffer heavily, and the Government will equally suffer in its revenue at a future settlement. Under these circumstances it will become necessary to vary the limits of enhancement according to the descriptions and capacities of land, and raise or lower the amount of enhancement as the circumstances of each case may demand. It is to be hoped that the powers thus given to the Local Government will be exercised by it judiciously. I am humbly but firmly of opinion that, owing to a rise in the market-rates and the improved means of communication, especially in those parts of the country to which the railway line has not yet been extended, it will become absolutely necessary to vary the limits of enhancement.

"My Lord, as the Taluqdárs have loyally sacrificed their interests and shown great moderation and liberality to their tenants, and as their objections are conceived in a perfectly fair and loyal spirit and couched in the most respectful terms, I have felt it my duty, as a member of the Select Committee, to try as best I could to obtain a fair and impartial consideration for all and each of their objections. But I was compelled to agree with my learned and hon'ble colleagues of the Select Committee in rejecting some of those objections for reasons they were good enough to explain to me. Greatly as I wished that there should be no reason for my holding a different view, I regret to say that I was reluctantly compelled to record my dissent on some important points in a minute annexed to the Select Committee's Report, now before this Hon'ble Council. The Taluqdárs' objections to the provisions of section 19 for the remission of rent are not unreasonable. What they want is that either section 23 of the North-Western Provinces Rent Act, XII of 1881, be applied to Oudh, or that section 20, Act XIX of 1868, which has long been in force in Oudh, be maintained. If the Government is disposed to show more mercy to tenants, it should equally divide between itself and the landlord the losses caused by unforeseen calamities.

"In fact, the landlords of Oudh are not better off than those of the adjoining districts of the North-Western Provinces. In some districts of the North-Western Provinces where the Permanent Settlement is in force, and which have long enjoyed the blessings of peace, the landlords surpass the landowners of Oudh in wealth and prosperity. Oudh has as yet known only a thirty years' settlement, and during the last thirty years of internal peace and security it has been disturbed by the harassing operations of a number of settlements giving rise to countless disputes and producing disastrous litigation. The landlords of Oudh are therefore by no means less entitled to the favourable consideration of the Government than those of the North-Western Provinces; and, if in the North-Western Provinces a remission of rent to tenants is followed by a remission of the revenue to the landlord, it is but just and reasonable that the same rule should be held good for Oudh. The Chief Secretary to the Government, North-Western Provinces and Oudh, in his letter No. $\frac{2456 \text{ B.}}{208\text{-}00}$, dated the 6th instant, has laid some stress on the fact that in practice the rule in question has led to serious errors; but from this, I humbly submit, it does not necessarily follow that the rule is radically wrong or defective and cannot be rectified or improved under proper supervision and by suitable instructions. If, however, it is considered desirable that this rule should not be introduced in Oudh, then the rule laid down in section 20 of the present Rent Act, which has been in force for eighteen years and has worked

so well and without prejudice to either party, need not be altered. The only ground on which it seems possible to make the proposed alteration is to give the statutory tenant the benefit of a remission of rent under exceptional circumstances in addition to the statutory privileges already conferred upon him. But the tenant's claim to a remission of rent falls to the ground when it is considered that he has obtained such valuable concessions from his landlord, who for seven long years will not be able to share the benefits the tenant will derive from the improved capacity of the land comprised in his holding, from the increased means of communication or from high market-rates, and who cannot enhance the rent beyond one anna in the rupee even after the expiration of that period. If the tenant is entitled to get the full benefit of his cultivation, he must be held equally liable to any accidental loss that may be caused by unforeseen calamities, and for which he can compensate himself from abundant crops in better years. But, if the landlord is made to bear the whole loss, he will have no means whatever of compensating himself for it. Further, the rule in question has not proved prejudicial to tenants in Oudh holding five years' leases.

"The third alternative proposed by the Taluqdárs rests on an equally just and equitable principle. As the Government gets one-half of what is paid to the landlord as rent, it is bound in justice to him to grant a remission of the revenue equal to half the rent remitted to the tenant by its officers. The landlords have good reasons to think that, if the connection of Government is maintained, tenants will not dare prefer false or frivolous claims, and the Government officers will investigate such claims with due care.

"On section 27 I humbly beg to observe that the recommendations of His Honour the Lieutenant-Governor may be adopted with advantage. Purely conjectural estimates of compensation for improvements have in practice been found erroneous, though estimates carefully made by experienced and honest men may be safely relied upon. But such men are hardly obtainable in this country for the execution of such a petty task, and His Honour the Lieutenant-Governor has justly approved of the amendment proposed by the Taluqdárs.

"As regards section 29 I humbly beg to observe that there is nothing in the whole Bill to prevent the tenant from making whatever improvement he likes, but it does not provide for the award of a compensation to the landlord or other tenants if the improvement effected by the sitting tenant causes any loss or damage to them. In Oudh, the tenant has no right whatever in the land he cultivates, and he may possibly make an improvement with the intention of occasioning loss to his landlord or other tenants.

" I humbly submit, My Lord, that I am at a loss to understand why especial provision should be made for the award by the landlord of an additional compensation to the tenant for any loss that may be caused to his (landlord's) own land by an improvement made by himself. It is quite clear that the landlord will not do anything which might prove prejudicial to himself.

" Now, with Your Lordship's permission, I will briefly explain the losses which an improvement made by a landlord might possibly be conceived to cause to a tenant. In the first place, the landlord sinks wells in the holdings of his tenants during a particular season of the year, that is, in May or June, when there are no standing crops which might possibly be injured thereby. The rainy and the cold seasons are not favourable to the construction of wells, which are exclusively made in summer.

" In the second place, even if a well sunk by the landlord in the holding of his tenant produces salt water, which is not favourable to cultivation generally, such water may nevertheless be utilized in raising a tobacco crop or other crops of a similar nature, to the growth of which irrigation with salt water has been found to be highly conducive. The tenant may not use such water for purposes of cultivation if he apprehends any loss or damage from using it.

" Thirdly, the construction of an embankment is a rare occurrence. Embankments are seldom or never constructed within cultivated areas, and cannot therefore cause any loss or damage to a tenant. But the tenant may himself injure his holding by opening an embankment suddenly and carelessly and letting in an excessive quantity of water, in which case the landlord cannot justly be made to share the blame which naturally attaches to the tenant. In my humble opinion the construction of an improvement cannot possibly tend to impair the productive powers of land, and there is no necessity for making an especial provision to that effect. It will be a great discouragement, if not a perfect bar, to improvements if landlords are required to pay additional compensation for accidental losses. The more useful and costly improvements are effected by landlords, and not by tenants. The rule in question, if maintained, will produce injurious effects.

" I also beg leave to bring prominently to the notice of this Hon'ble Council the fact that improvements, whether made by landlords or tenants, are effected with the special view of improving the productive powers of land and in perfectly good faith, and that any *bonâ fide* action cannot, and should not, be held to make the doer liable to compensation for any loss that may be caused thereby.

"The Taluqdárs' objections to the extension of the statutory privileges to *páhikásht* or non-resident tenants carry great weight and call for the especial attention of this Hon'ble Council. To promote the agricultural prosperity of the Province has been the guiding principle and the professed aim and object of the present Bill; and, as non-resident tenants are barred by local custom as well as by the terms of the *Wajib-ul-arz* from using water and manure for the improvement of their holdings, they should not be placed on an equal footing with resident tenants and admitted to the special privileges conferred on the latter. It cannot be said that the Taluqdárs have brought forward this point at the last stage of the Bill. They have already touched upon it in their printed memorandum (page 21) proposing changes in the Bill. So able and experienced an officer as Colonel Erskine, the Special Commissioner, the outcome of whose elaborate enquiries is the present Rent Bill, has, in paragraph 149 of his letter No. 135, dated 1st June, 1883, recommended the exclusion of *páhikásht* tenants from the new statutory privileges. I have already urged, in the course of these remarks, strong reasons against the views expressed on this point in the letter of the Chief Secretary to the Government, North-Western Provinces and Oudh, No. $\frac{2456 R.}{208-00}$, dated 6th instant.

"Lastly, I humbly beg to call the attention of this Hon'ble Council to section 69, wherein the words "by a registered document" appear to me quite unnecessary. The practical effect of this restriction will be to bar contracts between landlords and tenants for periods exceeding the statutory term of seven years, as neither will like to go a long way out of his village or estate to get every such document registered. I therefore humbly beg to suggest that registration may be made optional and not compulsory."

The Motion was put and agreed to.

The Hon'ble MR. QUINTON moved that the following be added to the definition of "revenue" in section 3, clause (*4*), of the Bill as amended by the Select Committee, namely:—

"in sections 34 and 35 it means land-revenue only."

He explained that the Select Committee had altered the definition of the word "revenue" as it stood in the present Act by omitting the article "the" before the word "money" in order to remove any doubt as to whether cesses were included in "revenue". It had been suggested, however, that there was a possibility of this affecting indirectly the interests of tenants with rights of occupancy, the term of enhancement of whose rent was fixed by sections 34 and

35 of the Bill; and, as it was not the wish or intention of the Select Committee to interfere in any way with the terms of the Rent Act of 1868 respecting occupancy-tenants, they proposed to make the amendment.

The amendment was put and agreed to.

The Hon'ble RANA SHANKAR BAKSH SINGH moved that the following be substituted for sub-sections (*2*) and (*3*) of section 19 of the Bill as amended by the Select Committee, namely :—

"(*2*) Where rent payable by an under-proprietor or tenant in respect of land assessed to land-revenue is remitted under sub-section (*1*), there shall be allowed to the landlord a remission of revenue equal in amount to half the amount of the rent remitted by the Court."

The Hon'ble MR. QUINTON said :—

"I must oppose the amendment. The law as it at present stands authorizes the Courts before which a suit for arrears of rent is brought to allow such remission from the rent payable as appears equitable, if the area or produce of the land held by the defendant has been diminished by diluvion, drought, hail, or other calamity beyond his control to such an extent that the full amount of rent payable cannot be equitably decreed. In case of tenants with rights of occupancy or holding a lease for five years, or sub-settlement-holders, this rule cannot be acted on unless a remission of revenue shall have been allowed on the same ground and by competent authority in the same estate.

"The Bill as introduced omitted this exception, so that the effect of the section was that the Courts could without any reference to the action of the Executive Government in remitting revenue allow a remission of rent under the circumstances above stated, if they considered it equitable, in the case of every tenant, and under the Bill all tenants other than tenants with a right of occupancy obtain what is practically a lease for seven years. The case is thus put by Sir Alfred Lyall :—

'The question is whether the entire section should be struck out, whereby the Courts would lose their power of making allowances in rent-decrees for inevitable calamities, or whether the section should stand without its proviso, whereby remissions of rent would cease to be in any case dependent on remissions of revenue. The latter course appears to the Lieutenant-Governor to be on the whole likely to be better for the interests of both landlord and tenant. If, as the Lieutenant-Governor believes, it is not expedient to withdraw from the Courts all power to take account of serious calamities in decreeing arrears

of rent, in that case to provide that this power shall only be used when revenue has been remitted is to shackle it with an awkward and hardly logical condition.'

"The proposal deprecated here by His Honour the Lieutenant-Governor, which is that embodied in the first, and is the effect of the third, amendment of my hon'ble friend, rests on several assumptions which a little reflection will show to be unfounded.

"It assumes in the first instance that, on the occurrence of an inevitable calamity which has ruined or damaged a tenant's crops, the landlord and tenant have, as my hon'ble friend has argued, in equity an equally strong claim to relief. But this is clearly not the case: the tenant is a small man having little margin over the means of subsistence for himself and his family, and holds, or will hold if the Bill passes, under only a seven years' tenure; the landlord, on the other hand, holds his estate under a thirty years' settlement, and in two-thirds of Oudh is a Taluqdár paying revenue from Rs. 5,000 to lakhs of rupees. A landlord whose income is derived from a large area has thirty years in which to make good the loss of rent which is due to unavoidable calamities; the tenant, whose holding is 5 acres, the average size of farms in Oudh, has only seven.

"Again, the proposal assumes that the measure of relief given to the landlord is the proper measure of the relief of which the tenant stands in need; but this is obviously a generalisation the application of which in particular cases must work great hardships. Government may for very good reasons consider that a zamindár who holds under a light settlement and is a man of substance is well able to bear an occasional loss of this nature, which may mean simple ruin to small tenants. Government may very properly think remission of revenue in such circumstances uncalled for in the cases of the Mahárájás of Bulrampore or Mehdowna, without implying that the full rents should be levied from the tenants of those gentlemen. The argument of my hon'ble friend that Government is not entitled to collect more land-revenue in a given year than half the rental realized by the landlords is obviously unsound. It ignores the fact that settlements are made for long periods instead of for a single year, and involves the position that, if the landlord pays only half the rents realized in bad years, Government would be entitled to half the full or enhanced rents realized in years of plenty. Further, a landlord who on the occurrence of a drought wishes to break down the statutory tenancy conferred upon his tenants has only to refrain from asking for a remission of revenue, while he gets decrees in the Rent Courts for arrears of rent which it is impossible for the tenants to pay, and thus use the Courts as instruments to defeat altogether the intentions of the law.

"The Local Government, however, quite recognize that landlords are unwilling to accept the possibility of large rent-remissions being granted by the Courts without any consequent remissions of revenue, and we have proposed that the sanction of the Deputy Commissioner should be necessary to the remission of rent by the District Courts, and that the test for the remission should be the actual power of the tenant to pay. Sir Alfred Lyall has also intimated his intention, if the Bill passes into law, of instructing Deputy Commissioners to use with care and discrimination the authority entrusted to them, and to bear in mind that any considerable remissions of rent will give a just claim to remission of revenue. The Select Committee, before whom my hon'ble friend argued his side of the case, as he has done today, with ability and persistence, have gone even beyond the Lieutenant-Governor and made two further important concessions. They have restored the provision of the existing law that tenants with rights of occupancy and sub-settlement-holders shall have no claim to remission of rent unless in consequence of a remission of revenue, and have laid down expressly the rule that Revenue-officers shall in other cases take into consideration any claim made by the landlord for remission of revenue when a remission of rent under this section causes a material diminution of the assets of the landlord in the village in which the remission is given. They feel that this is as far as they can go in legalizing a claim to remission of revenue on account of remission of rent, and consider that all cases falling short of this may properly and fairly be left to be dealt with by the Executive Government."

The amendment was put and negatived.

The Hon'ble RANA SHANKAR BAKSH SINGH moved that section 19 of the Bill as amended by the Select Committee be replaced by a section in the terms of section 23 of the North-Western Provinces Rent Act, 1881, with the following modifications, namely:—

(*a*) the words "Chief Commissioner" to be substituted for the words "Local Government" and "Board" wherever these latter words occur; and

(*b*) the word "landlord" to be substituted for the word "landholder".

The Hon'ble MR. QUINTON said:—

"This amendment I must also oppose. It proposes to apply to Oudh the law at present in force in the North-Western Provinces, which makes remissions of revenue in cases of calamity a condition precedent to remission of rent, and leaves the amount of such remissions to be determined by the Collector in his executive

capacity. Even if the rule were unobjectionable in the North-Western Provinces, it does not follow that it would be equally suitable for Oudh. In the latter Province three-fifths of the area is held by Taluqdárs, whereas in the North-Western Provinces the proportion held by large landholders is inconsiderable, and I am unable to admit the assertion of my hon'ble friend that the majority of Oudh landlords are not better off than those of the North-Western-Provinces. The permanently-settled area of Benares is only a small, though no doubt an important, portion of the latter Province. Injuries to crops on small estates may embarrass proprietors which on large estates cause little or no inconvenience to the landlord, and Government on grounds of humanity may be obliged to refrain from pressing of demand in one case which in the interests of the community generally it would be unjust not to enforce in the other. But even in the North-Western Provinces the rule is not altogether satisfactory. It is open to the objections of principle which I have urged in discussing the last amendment, and it forces the executive officers to interfere in every case and to apply a uniform rule in a rough and ready way to a large number of tenants whose cases may require nice discrimination and call for very different treatment.

"The Bill, on the other hand, leaves the parties concerned, who know best where the shoe pinches, to adjust their matters among themselves, and authorizes interference only when the landlord comes into Court to exact the uttermost farthing. Such interference can take place only in a judicial proceeding subject to appeal and to the other checks which I have already enumerated. The operation of these checks will soon prevent tenants from urging groundless claims on any large scale, which my hon'ble friend apprehends as one of the results of the measure. The Local Government, who are necessarily acquainted with the operation of both systems, are opposed to the introduction of the North-West rule into Oudh. For the reasons I have given and from my own experience of the practical working of that rule I altogether concur with them."

The amendment was put and negatived.

The Hon'ble RANA SHANKAR BAKSH SINGH moved that a section in the terms of section 20, Act XIX, 1868, be substituted for section 19 of the Bill as amended by the Select Committee.

The Hon'ble MR. QUINTON explained that the effect of this amendment would be precisely similar to that of the first amendment proposed by the hon'ble member, and, as the arguments which he had used in discussing that amendment applied equally to this one, he would not trouble the Council with any further remarks on the subject.

The amendment was put and negatived.

The Hon'ble RANA SHANKAR BAKSH SINGH moved that the word "registered" be omitted from section 20, sub-section (*4*), of the Bill as amended by the Select Committee: also that the words "by registered document" be omitted from sub-section (*1*), and the word "registered" from sub-section (*2*), of section 69 of that Bill: also that the words "not exceeding seven years" be omitted from section 156 of that Bill.

The Hon'ble MR. QUINTON said :—

"Under the Registration Act, which is of general application, the registration of leases of immoveable property from year to year or for any time exceeding one year or reserving a yearly rent is compulsory. The Lieutenant-Governor has, however, the power to exempt in certain localities leases the terms and annual rents in which do not exceed respectively five years and fifty rupees.

"The Lieutenant-Governor, in the Bill as introduced, proposed to exempt from compulsory registration all pattas granted for the statutory period of seven years. Registration in this case seemed to be unnecessary, as the pattas would be checked by the supervisor-kanungos, and the inconveniences of an enforced registration throughout the country would be very serious. My hon'ble friend now asks for a further exemption from the rules laid down by the Registration Act in favour of leases the term of which exceeds seven years, which, as I have already explained to Council, relieve the landlord from the liability to payment of stamp-duty on notices of ejectment. Such leases must for many years to come be altogether exceptional, and it is obviously desirable that, where so much will depend on the terms of the instrument by which these contracts are effected, every precaution should, in the interests of both parties, to prevent future disputes and litigation, be taken to secure the preservation of the document, and that the provisions of the general law on the subject should be applied to them. The apprehensions expressed by my hon'ble friend, that tenants will be deterred from taking such leases by the trouble of attending the registration-office, will, I hope, prove unfounded. When it is the wish of a tenant to obtain such a lease, he is not likely to be kept back by such an obstacle; and, as to the deterrent caused by payment of registration-fees, which is not now touched on by my hon'ble friend but was pressed upon us in Select Committee, it is always in the power of the Local Government to obtain from the Government of India an exemption from payment of registration-fees in favour of such instruments should it see any necessity for such a course."

The amendment was put and negatived.

The Hon'ble RANA SHANKAR BAKSH SINGH moved that the following proviso be added to section 27 of the Bill as amended by the Select Committee namely:—

"Provided that the compensation so estimated shall not in any case exceed the amount of the actual outlay on the improvement."

The Hon'ble MR. ILBERT said:—"My hon'ble colleague Rana Shankar Baksh Singh has referred to the recommendation of the Lieutenant-Governor on the subject of this amendment. It is perfectly true that the Lieutenant-Governor, in his Secretary's letter of the 6th September, 1886, suggested for the consideration of the Select Committee whether it might not be advisable to revert to the terms of the present Act and base the estimate of the compensation on the outlay of the tenant and the assistance of the landlord in money, material, labour or favoured rent. But I find on referring to the previous letter from the Lieutenant-Governor's Secretary of 15th January the following remarks in paragraph 18:—

'The principle on which compensation is calculated under the present Act is solely that of the outlay of the tenant. The last sentence of the section bars right to compensation for improvements which were made more than thirty years before the date of claim, and in practice the procedure of the Courts is to make an estimate of the probable outlay assume that the improvement will last for thirty years, and award to the tenant the sum which in that proportion represents its unexpired value. Thus, if a well is believed to have cost Rs. 300 ten years ago, the Court will award to the tenant Rs. 200. The principle is by no means a just one, for the landlord is exposed to great exaggerations by the tenant of his original outlay, and where the improvements are of old standing these statements are difficult to check. The Lieutenant-Governor considers that the principles laid down in section 83 of the Bengal Tenancy Act are not only in themselves more fair, but more simply and readily applied by the Courts, for it is seldom difficult in any village to ascertain the difference in letting value due to irrigation, and a well is the most common of all improvements in Oudh. A section has been accordingly introduced from the Bengal Act, section 25 (A), and the references to outlay and the period of construction omitted from section 22.'

"That is the section which was inserted in the Bill as sent up by the Local Government, and which the Select Committee, after considering the subject, made up their minds to retain. Now, it appears to me—if I may venture to say so without disrespect to the Lieutenant-Governor—that on this point his first thoughts were better than his second. The clause which was inserted in the Bengal Tenancy Act was framed after much consideration and discussion, and with reference to the conclusions arrived at not only by the Indian but by the

English legislature in dealing with tenants' improvements. Those conclusions were that in order to do justice between landlord and tenant both elements—that of outlay and that of result—ought to be taken into consideration. There are cases in which the result does not justify the expenditure, and in which a deduction from the amount expended should be made on that account. There are also cases in which a small but judicious outlay produces very valuable results, and in such cases it would not be fair to the tenant to limit the compensation to the amount originally expended. Both elements—that of outlay and that of result—should be kept in view, and in estimating the amount to be paid regard should be had to each. I think that we should in the present Bill adhere to the general principles laid down on other occasions, and therefore I must oppose this amendment."

The amendment was put and negatived.

The Hon'ble RANA SHANKAR BAKSH SINGH moved that sub-sections (*3*) and (*4*) be omitted from section 29 of the Bill as amended by the Select Committee, and that, as a consequence, sub-clause (*d*) of clause (*9*), and the words "or section 29, sub-section (*4*)," in clause (*12*), be omitted from division B of section 108 of that Bill.

The Hon'ble MR. QUINTON said:—

"My hon'ble friend's objection to sub-sections (*3*) and (*4*) of the section I can scarcely follow. The section first gives a landlord power to make an improvement on the holding of a tenant without a right of occupancy without his consent, and then enacts that, if, when making the improvement, he causes loss to the tenant, the latter shall have a claim for compensation against the landlord, or if the effect of the improvement is permanently to impair the productive powers of the holding the tenant shall be entitled to abatement of rent.

"The effect of the amendment of my hon'ble friend, if accepted, would be that a landlord might make an improvement on the holding of a tenant without his consent, but would not be liable to pay compensation for any loss caused in making it.

"My hon'ble friend, as I understand, contends that under the conditions of agriculture in Oudh it is impossible that any loss should be caused to the tenant of the holding, but, if this is so, then the section attaches no liability to the landlord. He can have no difficulty in successfully resisting any claim brought on

this account. But the Select Committee considers that cases are conceivable where, in the construction of an improvement to which his consent is not necessary, the tenant's crops may be damaged or the area of his holding diminished or otherwise injuriously affected, as in the case of an improvement the effects of which extend over several holdings; and the Local Government are of the same opinion. To refuse the tenant a right to compensation for such injuries would be a manifest wrong. The contemplation of the benefits arising to *B*'s holding and to the letting value of *C*'s land from an improvement the making of which has injured *A*'s fields cannot be said to be an equitable compensation for the damage *A* has suffered."

The amendment was put and negatived.

The Hon'ble MR. QUINTON moved that in section 38, sub-section *(2)*, of the Bill as amended by the Select Committee the words and figures "sections 49 and 50" be substituted for the word and figures "section 49". He said :—

"The section to which this and the following three amendments refer was inserted in the Bill as introduced at the instance of the Taluqdárs' Association and of the Local Government in order to make it clear that a landlord was entitled to an enhancement of rent even during the currency of a statutory tenure from a tenant on whose holding an improvement had been effected by or at the expense of the landlord or acquired by him. Since the Report was presented His Honour the Lieutenant-Governor has pointed out that the section bars, at least by implication, an enhancement of rent on an incoming tenant in excess of one anna in the rupee when the landlord has paid to the tenant's predecessor compensation determined by a Court under the Act.

"The cases are similar in principle and can be supported by the same arguments. The desirability of increasing the productive powers of the soil by promoting improvements is admitted on all hands, and the Lieutenant-Governor is of opinion that, unless the section be amended as I now propose, landlords would have a strong interest in opposing all improvements made by their tenants and in contesting every claim to make such an improvement, and that thus a serious obstacle would be raised to the advancement of objects urgently called for by public policy."

The amendment was put and agreed to.

The Hon'ble MR. QUINTON moved that in section 47, sub-section (*1*), of the same Bill the words and figures "sections 49 and 50" be substituted for the word and figures "section 49".

He explained that the observations which had been made on the preceding amendment applied equally to this one, and that he had no further remarks to offer regarding it.

The amendment was put and agreed to.

The Hon'ble MR. QUINTON also moved that in section 47, sub-section (*2*), of the same Bill, between the words "a sum which" and the words "shall not exceed" the words and figures "subject to the provisions of sections 49 and 50" be inserted. .

He said that this amendment was also consequential on the preceding one.

The amendment was put and agreed to.

The Hon'ble MR. QUINTON also moved that in section 50 of the same Bill the words "during the currency of a tenancy", where those words occur between the word "rent" and the words "on the ground that", be omitted, and that for the last sixteen words of that section the following be substituted, namely :—

"or for which during the currency of the tenancy compensation has been accepted from the landlord by the owner of the improvement, or, on the expiration of the tenancy, compensation has been paid in accordance with the determination of a Court under this Act."

This amendment, MR. QUINTON explained, was also consequential on the preceding one.

The amendment was put and agreed to.

The Hon'ble RANA SHANKAR BAKSH SINGH moved that the following clause be added to section 62, sub-section (*1*), of the Bill as amended by the Select Committee, namely :—

"(*e*) that the tenant is a *páhikásht* or non-resident tenant, and a resident tenant desires to be admitted to the occupation of the land comprised in the holding of the *páhikásht* or non-resident tenant."

The Hon'ble MR. QUINTON said :—

"The point raised by this amendment was started in the discussions at Lucknow by the Taluqdárs, who were anxious that the Bill should be altered in

the direction my hon'ble friend now proposes. The Lieutenant-Governor, however, was unable to accede to the proposal. In submitting Major Erskine's report to the Government of India so long ago as December, 1883, Sir Alfred Lyall recommended that non-resident cultivators should not be excluded from the benefits of the Act. He admitted the force of the arguments, such as have now been urged by my hon'ble friend, arising from the inefficiency of *páhikásht* cultivation, the desirability of discouraging it and the necessity of giving the landlord special facilities for substituting resident for non-resident cultivation whenever opportunity may occur; but it was ascertained in the course of the enquiry that *páhikásht* cultivation prevailed to a considerable extent and had not diminished since settlement, from which it was inferred that this cultivation was a useful complement to the more carefully tended fields of an agriculturist's home farm, to be deprived of which would seriously cripple him in his business. If a landlord of two contiguous villages or two landlords in collusion could eject at pleasure from the non-resident portions of holdings, they would have a very strong hold on tenants in regard to their farms in their villages of residence.

"The figures given in the report as to the proportion of tenants who cultivated more or less land outside their villages of residence bore out this inference, and the Local Government accordingly decided that non-resident cultivators could not properly be excluded from the benefits of proposals intended for the tenantry at large. This principle was accepted by the Government of India and by the Secretary of State. It was accordingly maintained in the Bill as introduced, and is adhered to by the Local Government after full consideration of the representation of the Taluqdárs at Lucknow. Sir Alfred Lyall writes:—'No evidence has been brought forward in contradiction of the data obtained from the records of Colonel Erskine's enquiry.'

"With reference to the remark of my hon'ble friend that it cannot be said that the Taluqdárs have brought forward this point at the last stage of the Bill, I would observe, without wishing to attach too much importance to the fact, that the Bill as introduced had been for some time before the Taluqdárs' Association, and discussed by them when they wrote their letter of the 24th of April last printed in Papers No. 2, accepting *in their entirety* its rules of seven years' leases and of the limitation of enhancement to 6¼ per cent., and the Bill as introduced made no exception from these rules as regards *páhikásht* tenants."

The amendment was put and negatived.

The Hon'ble MR. QUINTON moved that in section 129 of the Bill as amended by the Select Committee the word "Act" be substituted for the word "Chapter" where the latter word occurs.

He explained that the amendment was merely formal and was meant to correct a clerical error.

The amendment was put and agreed to.

The Hon'ble MR. QUINTON moved that the Bill, as amended, be passed. He said :—

"This motion, My Lord, is the final stage of the Bill which, with one or two important exceptions to which I referred in my remarks earlier in the debate, is in its principles the same measure as that introduced in Calcutta last February. In what I said on that occasion, and again in June last in moving to refer the Bill to a Select Committee, I was obliged to trespass to such a length on the patience of Council in order to describe the state of things which in the opinion of the Government rendered legislation necessary and to explain the principles on which it was proposed that that legislation should be based, that I shall make no further demand on the forbearance of hon'ble members by attempting to go over the same ground.

"The measure has been long and anxiously considered in all its details by the Local Government and the Government of India. It deals with a subject which bristles with difficulties, and was fought over not very long ago by angry and embittered partizans, and it affects materially the interests and happiness of millions of human beings. It has been conceived, matured and elaborated in a spirit of caution and moderation by authors not eager on the one hand to revive the flames of a burnt out controversy or to disturb the agricultural relations of the country beyond what the necessities of the case call for, but earnest on the other hand to afford such protection to the tenants as would be giving them a reasonable prospect of enjoying the fruits of their labour, stimulate their industry, promote the prosperity of all classes dependent on the cultivation of the soil, remove grounds for antagonism between those classes and strengthen the hands of the weaker party in all future dealings respecting the occupation of the land of this great Province. In the hope and expectation that it will in some degree prove effectual in bringing about these objects I now ask Council to pass the Bill."

The Hon'ble SIR AUCKLAND COLVIN said :—"I shall not detain your Excellency and the Council more than a few moments. It was only at a comparatively late hour that I have been enabled to take part in the discussions which have led to this measure as it now stands before us. The burden of those discussions has fallen mainly on the Government of the North-Western Provinces

and Oudh and on its officers, on my hon'ble friend Mr. Ilbert and on the Taluqdárs of Oudh. But I trust I may be allowed to bear my tribute to what has seemed to me to have been, during the course of the deliberations in which I have shared, the extremely reasonable and equitable spirit in which, whether in official or non-official conferences, my hon'ble friend Rana Shankar Baksh Singh and the Taluqdárs who have accompanied him have approached this subject, which necessarily to them, in a degree not less than to the Government, involves issues of extreme importance. If we have not been able to meet on some comparatively minor points—such as those which form many of the amendments on the paper before us—the views entertained by the Taluqdárs, we have, I think, established with them a complete and cordial understanding on the main principles which underlie this Bill and in accordance with which it will have to be worked. I confidently believe that this measure when made law will contribute to bring about an equitable and durable settlement of the various issues raised in the course of this discussion, and that its influence on the future relations of landlords and tenants in Oudh will be of effective benefit. My hon'ble friend Mr. Quinton has expressed some doubt with regard to the view which the Financial Department of the Government of India may be inclined to take in respect to the provisions regarding stamp-duties on notices of ejectment. I hope I may be allowed to hasten to re-assure him on that point, and to say that I identify myself completely with the views he has put forward as those entertained by the Government of the North-Western Provinces and Oudh, and that the Financial Department will certainly abstain from laying any claim to revenues arising from that source which the Government in the pursuit of administrative measures calculated to give greater security and relief to the cultivators may desire to appropriate."

The Hon'ble MR. ILBERT said:—"When this measure was last before the Council, my hon'ble colleague Sir Steuart Bayley congratulated the Council on the circumstances under which they were proceeding with the Bill. Those congratulations are, I am sure, still more appropriate on the present occasion. We have been told how, since last June, the provisions of the Bill have been carefully and thoroughly discussed with the Oudh landowners and their representatives at a series of conferences which have been held at Lucknow, and the result of those discussions has been to materially lighten and shorten the labours of the Select Committee which has been sitting here. But it must not be supposed that the Select Committee have accepted *en bloc* and without examination the Lucknow proposals. On the contrary we have gone through each of the several suggestions and proposals brought forward at Lucknow, with the reasons by which they were supported, have considered them on their merits and have

re-cast the Bill accordingly. In the performance of this task we have had the assistance not only of my hon'ble friend Rana Shankar Baksh Singh, but of the gentlemen who have accompanied him from Oudh, and who represent, I understand, different classes of landowners and different parts of the Province. I explained to these gentlemen how I was precluded by our rules from allowing them to take a direct part in the deliberations of the Select Committee, but I promised them that they should have full opportunity of placing personally their views and arguments before myself and the other members of the Committee; and they will, I am sure, admit that I have redeemed my promise on this point. We have had the advantage of hearing the arguments for and against the material provisions of the Bill clearly, forcibly and temperately stated, and any one who was present at the conferences which have been held could honestly testify that the interests of the absent were adequately represented. The amendments which have been moved today—all of which, I may be permitted to observe, had been previously very carefully considered in Select Committee—will show how few and comparatively unimportant are the points about which there is still any difference between the Government and the representatives of the Taluqdárs. It is true that this agreement has been facilitated by material concessions to the Taluqdárs. We have been able to meet my hon'ble friend Rana Shankar Baksh Singh on both of the two points to which he took special exception in the Bill as introduced—I mean on the question of compensation for disturbance, and with respect to the clause providing special machinery for enforcing the conditions of the sanads. With respect to both these points I should personally have preferred to retain the provisions of the Bill as originally introduced, but in saying this I must not be understood as qualifying in any way my full assent to the recommendations of the Select Committee that, in view of the considerations urged by the Local Government, the modifications proposed in the interests of the Taluqdárs should be accepted. Those considerations were based to a great extent on the assurance that the landholders of Oudh could be trusted to work the Act in the spirit in which it is intended to be worked, and that the restrictions on their powers originally proposed for the protection of the tenant would be in practice unnecessary; and it is in the assurance that this confidence is not misplaced that the Government of India has assented to the Bill in its present form. With respect to the sanads, I need not do more than repeat what my friend Mr. Quinton has said, that nothing in this Bill will in any way modify or impair their effect. And, as to the substitute for compensation for disturbance, I am very glad to hear from my friend Sir Auckland Colvin that he thinks the Financial Department will be able to find a way for removing or lessening the objection to which it is most palpably open. I have every hope that the measure now before the Council will prove a lasting and satisfactory arrangement.

It embodies not any compact with any particular class or section of those interested in the land but an endeavour on the part of the legislature to reconcile as far as possible the conflicting views, wishes and interests of the several classes and sections after a fair and impartial hearing of all concerned."

His Excellency THE PRESIDENT said:—

"Before putting the motion that this Bill be passed, I desire to express my entire concurrence with everything that has fallen from my hon'ble colleague on the left (Mr. Ilbert) and from the Financial Member. I am also glad to have this opportunity of congratulating all concerned upon the fortunate and propitious issue which has attended the inception, the discussion and the elaboration of this measure. As Mr. Quinton has already remarked, it is a most important Bill, affecting the happiness of thousands and thousands of Her Majesty's subjects; and, having had considerable experience in land legislation, I must say that I have never taken part in any controversy affecting such various and momentous interests in which so laudable a spirit of conciliation has been exhibited. I especially desire to congratulate my hon'ble colleague who represents the Taluqdárs of Oudh upon the manner in which he has brought to notice the views of himself and of his associates regarding the Bill, and on the successful manner in which he has vindicated their interests and set forth their moderate and reasonable demands."

The Motion was put and agreed to.

The Council adjourned to Thursday, the 21st October, 1886.

S. HARVEY JAMES,
Offg. Secretary to the Govt. of India,
Legislative Department.

SIMLA;
The 6th October, 1886.

G

Govt. C. B. Press, Simla.—No. 531 L. D.—7-10-86.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Viceregal Lodge, Simla, on Thursday, the 21st October, 1886.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

The Hon'ble C. P. Ilbert, C.S.I., C.I.E.

The Hon'ble Sir T. C. Hope, K.C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble Major-General G. T. Chesney, R.E., C.S.I., C.I.E.

The Hon'ble Colonel W. G. Davies, C.S.I.

The Hon'ble J. B. Peile, M.A., C.S.I.

SIR HERBERT MACPHERSON'S DEATH.

His Excellency THE PRESIDENT SAID:—Before the Council proceeds to its ordinary business I desire to take this opportunity of expressing, in the name of the Government of India, the deep sorrow and concern with which we have heard of the death of one of our most distinguished Generals—Sir Herbert Macpherson. Until yesterday morning we had received no intimation even of his being unwell. On first reaching Mandalay, indeed, he noted in one of his letters to the Commander-in-Chief that he had suffered from a slight touch of the sun, but he spoke lightly of the matter, and from his subsequent correspondence there was no appearance of its having produced any inconvenient effects.

"During the short time that he has remained in command in Burma he devoted himself unremittingly to the arduous duties which he had undertaken, and he travelled about the country in various directions, and eventually went up to Bhamo. It is to be presumed that on his return he must have contracted the fatal fever of which he died. It was on his way out to sea, whither he was being taken in the hope of the sea air proving beneficial to him, that he expired.

"In Sir Herbert Macpherson both India and England have lost a most talented and trustworthy officer, as well as a gallant and noble soldier. He has died in the discharge of his duty, and I have taken upon myself to communicate to his family in the name of my colleagues our deep sympathy and regret.

I have received a telegram from Her Majesty the Queen in which She also expresses Her deep sorrow at the calamity—for it is no less—which has, thus suddenly, overtaken Herself and the country."

DEKKHAN AGRICULTURISTS' RELIEF BILL.

The Hon'ble SIR THEODORE HOPE presented the Report of the Select Committee on the Bill to amend the Dekkhan Agriculturists' Relief Acts, 1879 to 1882.

The Hon'ble SIR THEODORE HOPE also moved that the Report be taken into consideration. He said:—

"In making this motion I have merely to state that the Select Committee have found very little to alter in the Bill as originally introduced. On the suggestion of the Governor of Bombay in Council we have, I think I may say *ex majore cantelâ*, defined the expression 'standing crops' so as to make it perfectly clear that it includes garden-produce attached to trees or to the soil. We have also made an amendment (which is perhaps the only amendment worthy of specific notice) in the section relating to documents which are registered by the Village-Registrar. In the Bill it was contemplated that the Village-Registrar should no longer make an exact transcript of a deed into his register, but merely an abstract. From further consideration, however, and communication with the local authorities of Bombay, it appears doubtful whether persons of the comparatively scant education and want of legal knowledge, which may not unfairly be considered characteristics of the Village-Registrars, would be able to make a trustworthy summary of documents. We have therefore thought it better to leave the law as it is, and to let the documents still be transcribed *verbatim* into the books. At the same time this does not alter the provision originally contemplated that any person who wishes to have a copy of what has been registered shall receive one, but now, instead of getting a copy merely of the abstract made by the Village-Registrar, he will get one of the document itself whenever he desires to have it.

"We have taken the opportunity of correcting a trifling misprint which, singular to say, seems to have survived from 1879 up to the present time the scrutiny of all officers concerned.

"We have likewise added what I may term a somewhat routine section in order that persons having claims of a certain description, mentioned in section 3,

clause (*x*), may not be prejudiced by the application of the special rules of limitation prescribed in section 72 being restricted to suits of the kind mentioned in section 3, clause (*w*).

"The papers which we have received from Bombay contain a variety of very interesting remarks upon the Act itself, introduced apparently *apropos* of section 3 of the Bill, by which the Local Government receives power to extend it, with the previous sanction of the Governor General in Council, to other parts of the Bombay Presidency. To a very large extent these comments are satisfactory; in certain cases the opinion is not so favourable to such an extension; but after carefully considering them I venture to think that such objections as have been brought forward are not in any respect different from those which on previous occasions have been laid before this Council and have not been held to justify hesitation in extending the benefits of the Act."

The Hon'ble MR. PEILE said:—"I think that the amendments in the Dekkhan Agriculturists' Relief Acts proposed in this Bill should be adopted. I was concerned, as a member of the Bombay Government, in the inquiries and discussion which preceded the introduction of this Bill; and though observation of the working of the Act did not fall within my special province, yet as a measure affecting the interests of the agricultural classes I have given attention to it. The exceptional character of this legislation imposes caution in declaring it a confirmed success, but I think that, with some conflict of opinion, the balance of evidence is distinctly in favour of the Act. Its procedure, as it will be amended by this Bill, appears to me so beneficial that in part at least it may well be extended to other districts under the power given by the third section of this Bill. That procedure is acceptable to the agricultural classes because it is simple and intelligible to them, and in conformity with their customs and traditions. The principles of that procedure are that the debtor and creditor should be brought face to face. That can always be done under the amendment in section 8 of this Bill—a section which will no doubt require to be carefully watched in its effect. They are then led, if possible, to an amicable compromise, and if that is not possible their confused accounts are turned inside out by the Court, the agriculturist is told what he owes, instalments are fixed if necessary according to his means, and he is required to pay them out of the produce which he raises from his land. This latter obligation will be enforced by the amendment made in section 7 of this Bill, and I trust that that amendment will remove any sense of grievance under which the creditors have hitherto suffered. The great advantage of the Act is that, while providing for the payment of debt, it maintains the agriculturist in the possession and use of his holding. In this sense this

legislation is a complement of the revenue law and practice in Bombay, which ensures to the holder of land under Government a position of exceptional stability and security. It is held that the merits of the Act can only be finally tested by a famine, and that in that case loans may not be forthcoming. No doubt famine puts a severe strain on agricultural credit and temporarily depreciates the value of land as a security. But a load of ancestral debt has been cleared off, and if perhaps under that process some hardship has been felt by creditors yet the provisions of the Act are not prohibitive of fair money-dealing in the future. Sahukárs are not sentimental, and I presume that a business man would not consider an agricultural holding a less desirable security for a loan because it has been cleared from previous encumbrances."

The Motion was put and agreed to.

The Hon'ble SIR THEODORE HOPE also moved that the Bill, as amended, be passed.

The Motion was put and agreed to.

ELECTRICITY SUPPLY BILL.

The Hon'ble SIR THEODORE HOPE also moved for leave to introduce a Bill to regulate the supply of electricity for lighting and other purposes. He said :—

"In making this motion I should explain that the necessity for this Bill was demonstrated about three or four years ago, when we suddenly had an influx into India of companies and promoters of companies for the purpose of electric lighting. These companies proposed to start operations, and actually did in some cases start them, in some of the principal towns of India. But when we desired to regulate their proceedings with a view to the safety of the public and the prevention of interference with our own telegraphic system, we found that we were without the legal means of doing so. As regards the public, it is probably well known that there is considerable danger arising from electric light connections in consequence of the currents used in the production of the light being of very great strength. They are so powerful as to cause instant death to any person who comes in contact with them, or to set fire to any inflammable material which lies on the wires while the currents are passing. Again, when electric light wires pass within a certain distance of telegraph or telephone wires, obstructive currents are liable to pass from one to the other, which of course entirely put a stop to the use of the telegraph and telephone for the time being.

In order to meet these two difficulties the Bill proposes, as regards protection, that the wires or communications should be put in such a position that contact is impossible, or that they should be so covered with insulating material that contact with them will produce no evil results. As regards interference with the telegraph and telephone wires, the only thing that can be done is to take care that the electric light wires are placed sufficiently far off. That again is an extremely technical matter, and is dependent on the strength of the current used and local circumstances. The Bill therefore provides, in order to secure all these purposes, that any company which desires to supply electricity must take out a license from the Governor General in Council; in this license regulations and conditions will be provided suitable for the particular circumstances of the occasion."

The Motion was put and agreed to.

The Hon'ble SIR THEODORE HOPE also introduced the Bill.

The Hon'ble SIR THEODORE HOPE also moved that the Bill and Statement of Objects and Reasons be published in the Gazette of India in English and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

GLANDERS AND FARCY BILL.

The Hon'ble MR. ILBERT moved that the Bill to extend the Glanders and Farcy Act, 1879, to the Bombay Presidency be taken into consideration. He explained that the Bill had received the approval of the Bombay Government, and he thought there was no reason why it should not be passed into law without further delay.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Bill be passed.

The Motion was put and agreed to.

BENGAL CIVIL COURTS BILL.

The Hon'ble MR. ILBERT also presented the Preliminary Report of the Select Committee on the Bill to amend the law relating to Civil Courts in Bengal, the North-Western Provinces and Assam. He said:—

"This Bill was introduced by my predecessor in 1881 with a view of removing certain minor defects in the Bengal Civil Courts Act. It was referred to

a Select Committee and circulated for opinion, but its further progress was suspended by the revival of a scheme for establishing local Appellate Benches in Bengal—a scheme which is still in abeyance in consequence of financial and other difficulties. The amendments proposed by the Bill, though useful, can hardly be described as of urgent importance, and I should have been content to leave the measure to slumber a little longer in the archives of the Legislative Department but for the circumstance that there is before the Legislative Council another Bill which ought to be passed at an early date and which may affect the Bengal Civil Courts Act. I refer to the Bill to amend the law relating to Provincial Small Cause Courts. Under these circumstances I have taken upon myself, as the single representative of the Committee on the Bengal Civil Courts Bill, to have that Bill revised in accordance with the opinions that have been received, and to prepare a Report explaining the nature of the amendments which have been made, and recommending that the Bill, as amended, be re-published. And I propose to move that the Select Committee be reinforced by the addition of those members of the Committee on the Small Cause Courts Bill who are connected officially or otherwise with the Provinces to which the Civil Courts Act applies, in order that the two measures—the Civil Courts Bill and the Small Cause Courts Bill—may be considered together. Whether a single member of the Committee is technically competent to submit a Report on behalf of the whole Committee may possibly be open to doubt; but in view of the obvious convenience of the course which I propose for adoption, and of the fact that it will not in any way fetter the action either of my successor or of the Council or of any one else, I trust that the irregularity, if any, may be condoned."

The Hon'ble MR. ILBERT also moved that the Bill to amend the law relating to Civil Courts in Bengal, the North-Western Provinces and Assam be re-published.

The Motion was put and agreed to.

The Hon'ble MR. ILBERT also moved that the Hon'ble Mr. Peile, the Hon'ble Mr. Quinton and the Hon'ble Bábú Peári Mohan Mukerji be added to the Select Committee on the Bill.

The Motion was put and agreed to.

The Council adjourned *sine die.*

S. HARVEY JAMES,
Offg. Secretary to the Govt. of India,
Legislative Department.

SIMLA;
The 27th October, 1886.

Govt. C. B. Press, Simla.—No. 586 L. D.—28-10-86.—316.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House, on Friday, the 17th December, 1886.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.B., G.C.M.G., G.M.S.I., G.M.I.E., P.C., *presiding*.

His Honour the Lieutenant-Governor of Bengal, K.C.S.I., C.I.E.

The Hon'ble Sir T. C. Hope, K.C.S.I., C.I.E.

The Hon'ble Sir A. Colvin, K.C.M.G., C.I.E.

The Hon'ble Major-General G. T. Chesney, R.E., C.S.I., C.I.E.

The Hon'ble J. B. Peile, M.A., C.S.I.

The Hon'ble A. R. Scoble, Q.C.

The Hon'ble R. Steel.

The Hon'ble W. W. Hunter, C.S.I., C.I.E., LL.D.

The Hon'ble Syud Ameer Hossein.

The Hon'ble Peári Mohan Mukerji.

The Hon'ble W. S. Whiteside.

NEW MEMBERS.

The Hon'ble SYUD AMEER HOSSEIN and the Hon'ble MR. WHITESIDE took their seats as Additional Members.

SELECT COMMITTEES.

The Hon'ble MR. SCOBLE moved that he be substituted for the Hon'ble Mr. Ilbert as a Member of the Select Committee on the Bill to amend the law relating to the Civil Courts in Bengal, the North-Western Provinces and Assam.

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that he be substituted for the Hon'ble Mr. Ilbert and the Hon'ble Mr. Peile be substituted for the Hon'ble Sir S. Bayley as Members of the Select Committee on the Bill to consolidate and amend the law relating to Courts of Small Causes established beyond the Presidency-towns.

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that he be substituted for the Hon'ble Mr. Ilbert and the Hon'ble Mr. Peile be substituted for the Hon'ble Sir S. Bayley as Members of the Select Committee on the Bill to consolidate and amend the law relating to Guardian and Ward, and that the Hon'ble Mr. Whiteside be added to the Committee.

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that he be substituted for the Hon'ble Mr. Ilbert and the Hon'ble Mr. Peile be substituted for the Hon'ble Sir S. Bayley as Members of the Select Committee on the Bill to amend and consolidate the Law of Bankruptcy and Insolvency in British India.

The Motion was put and agreed to.

The Hon'ble MR. PEILE moved that he be substituted for the Hon'ble Sir S. Bayley and the Hon'ble Mr. Scoble be substituted for the Hon'ble Mr. Ilbert as Members of the Select Committee on the Bill to alter the constitution of the Body Corporate known as the Trustees of the Indian Museum and to confer certain additional powers on that Body.

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE moved that he be substituted for the Hon'ble Mr. Ilbert and that the Hon'ble Mr. Peile be substituted for the Hon'ble Sir S. Bayley as Members of the Select Committee on the Bill to amend the law relating to Imprisonment for Debt, and that the Hon'ble Sir Theodore Hope, the Hon'ble Mr. Steel and the Hon'ble Syud Ameer Hossein be added to the Committee.

The Motion was put and agreed to.

The Hon'ble SIR A. COLVIN moved that the Hon'ble Mr. Scoble be substituted for the Hon'ble Mr. Ilbert as a Member of the Select Committee on the Bill to amend the Indian Ports Act, 1875, and that the Hon'ble Messrs. Steel and Whiteside be added to the Committee.

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE moved that he be substituted for the Hon'ble Mr. Ilbert and the Hon'ble Mr. Peile be substituted for the Hon'ble Sir S. Bayley as Members of the Select Committee on the Bill to amend the Indian Companies Act, 1882.

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that he be substituted for the Hon'ble Mr. Ilbert as a Member of the Select Committee on the Bill to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto, and that the Hon'ble Rao Saheb Vishvanath Narayan Mandlik and the Hon'ble Mr. Whiteside be added to the Committee.

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that he be substituted for the Hon'ble Mr. Ilbert and the Hon'ble Mr. Peile be substituted for the Hon'ble Sir S. Bayley as Members of the Select Committee on the Bill to amend the Indian Evidence Act, 1872, and that the Hon'ble Mr. Whiteside be added to the Committee.

The Motion was put and agreed to.

The Hon'ble SIR A. COLVIN moved that the Hon'ble Mr. Scoble be substituted for the Hon'ble Mr. Ilbert and the Hon'ble Mr. Peile be substituted for the Hon'ble Sir S. Bayley as Members of the Select Committee on the Bill to consolidate and amend the law relating to Native Passenger Ships, and that the Hon'ble Syud Ameer Hossein and the Hon'ble Mr. Steel be added to the Committee.

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE moved that he be substituted for the Hon'ble Mr. Ilbert and the Hon'ble Mr. Peile be substituted for the Hon'ble Sir S. Bayley as Members of the Select Committee on the Bill to amend the Code of Civil Procedure and the Indian Limitation Act, 1877, and that the Hon'ble Rao Saheb Vishvanath Narayan Mandlik and the Hon'ble Peári Mohan Mukerji be added to the Committee.

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that he be substituted for the Hon'ble Mr. Ilbert and the Hon'ble Mr. Peile be substituted for the Hon'ble Sir S. Bayley as Members of the Select Committee on the Bill for further shortening the language used in Acts of the Governor General in Council, and for other purposes, and that the Hon'ble Mr. Hunter be added to the Committee.

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also moved that he be substituted for the Hon'ble Mr. Ilbert as a Member of the Select Committee on the Bill to provide for the protection of Indigenous Tribes in Burma, and that the Hon'ble Mr. Whiteside be added to the Committee.

The Motion was put and agreed to.

The Hon'ble MAJOR-GENERAL CHESNEY moved that the Hon'ble Mr. Scoble be substituted for the Hon'ble Mr. Ilbert as a Member of the Select Committee on the Bill to abolish Military Courts of Requests as established by Indian Military Law, and that the Hon'ble Mr. Whiteside be added to the Committee.

The Motion was put and agreed to.

The Hon'ble SIR THEODORE HOPE moved that the Bill to regulate the supply of electricity for lighting and other purposes be referred to a Select Committee consisting of the Hon'ble Messrs. Peile, Scoble and Steel, the Hon'ble Peári Mohan Mukerji and the Mover.

The Motion was put and agreed to.

CRIMINAL PROCEDURE CODE AMENDMENT BILL.

The Hon'ble MR. SCOBLE moved for leave to introduce a Bill to amend the Code of Criminal Procedure, 1882. He said:—

"This is a Bill which owes its origin to representations made by the Chief Justice and the Judges of the High Court of Calcutta that the present constitution of the special jurors list occasions considerable inconvenience to the gentlemen who are liable to be called upon to serve as special jurors at the criminal sessions here. As the law now stands, under section 312, the names of not more than two hundred persons shall at any one time be inserted in the special jury list. It has been found, in consequence of the fluctuating character of a portion of the population of Calcutta who are entitled to be entered in the special jury list, that the operation of this section presses very heavily upon many classes; and it is proposed that, instead of only two hundred persons being eligible to be entered in the special jury list, not more than four hundred shall be eligible for entry in that list. The Judges state that this will enable the special jurors to be empanelled from time to time without causing any inconvenience to any class, and that the addition of a possible two hundred more to

this list of those already liable to serve as special jurors will not in any way interfere with the efficiency of the common jury list. The main clause of this Bill provides therefore for the substitution of 'four hundred' for 'two hundred' in section 312 of the Criminal Procedure Code.

"It having been considered desirable to introduce a Bill for the purpose of thus enlarging the special jury list in Calcutta, a reference was made to the High Courts in Madras and Bombay, and they intimated that, although they considered the working of the present law for those Presidency-towns was satisfactory, they saw no inconvenience whatever in the proposed alteration, as it would give them, if occasion should arise, an opportunity for a similar enlargement of the special jury list in Madras and Bombay.

"The second point to which the Bill refers is a small matter, which has, nevertheless, created some practical inconvenience. It arises on a definition in the interpretation-clause, section 4, of the Criminal Procedure Code. In that section 'police-station' is defined to mean 'any post declared, generally or specially, by the Local Government to be a police-station for the purposes of this Code, and includes any local area specified by the Local Government in this behalf.'

"I understand that as a matter of fact the local area included under the definition of 'police-station' very often includes the whole of a taluq, and in some cases extends over a considerable district of many square miles in extent. That in itself would not be a reason for altering the definition of 'police-station' were it not that in the latter part of the clause the definition of 'officer in charge of a police-station' provides that only when the officer in charge of the police-station is absent therefrom or unable from illness to perform his duties, the police-officer present at the police-station who is next in rank to such officer and is above the rank of constable, or, when the Local Government so directs, any other police-officer so present shall perform those duties. When the officer in charge of a police-station, as frequently happens, is going round his district, within the local area included under the term 'station,' it frequently happens that applications are made at the station-house which require immediate attention, and which cannot be attended to by the officer next in rank, who is technically not in charge of the station according to the strict construction of the clause. It is clear, therefore, that it is desirable that the definition should be so altered as to provide that when the head officer in charge is travelling within the limits of his local area on duties connected with the police, the police-officer next in rank present at the police-station should be

able to act for him. The second section of this Bill will have the effect of removing that difficulty, by so altering this definition in the interpretation-clause that the chief police-officer actually present at the station-house will be able to perform the duties of the officer in charge of the police-station when that officer is absent from the station-house within the limits of his own jurisdiction on duty."

The Motion was put and agreed to.

The Hon'ble MR. SCOBLE also introduced the Bill.

The Hon'ble MR. SCOBLE also moved that the Bill and Statement of Objects and Reasons be published in the *Gazette of India* in English and in the local official Gazettes in English and in such other languages as the Local Governments think fit.

The Motion was put and agreed to.

The Council adjourned to Friday, the 7th January, 1887.

S. HARVEY JAMES,
Offg. Secy. to the Govt. of India,
Legislative Department.

FORT WILLIAM;
The 20th December, 1886.

Govt. of India Central Printing Office.—No. 2 0 L D —21-12-86,—3 8.